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ISLAM, GENDER, AND DEMOCRACY IN COMPARATIVE PERSPECTIVE

Edited by
JOCELYNE CESARI
AND JOSÉ CASANOVA

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Table of Contents

List of Figures and Tables

Figures

Tables

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Introduction

Jocelyne Cesari

The relationship between secularism, democracy, religion, and gender equality has been complex across Western democracies and still remains contested. When we turn to Muslim countries, the situation is even more multifaceted. In the view of many Western commentators, the question of women's rights is the litmus test for Muslim societies in the age of democracy and liberalism. The Arab Awakening in particular, the issue is usually framed as the opposition between liberal advocates of secular democracy and religious opponents of women's full equality.

This book intends to critically re-engage this too simple binary opposition by reframing the debate around Islam and women's rights within a broader comparative literature that examines the complex and contingent historical relationships between religion, secularism, democracy, law, and gender equality. In fact, history tells us that there is no systematic connection between secularism and democracy: secular authoritarian regimes such as Turkey under Mustafa Kemal Atatürk or Iraq under Saddam Hussein have advanced women's rights, while curtailing democracy and civil rights. Post-secularist Muslim democracies, in turn, may have expanded electoral rule and some civil rights, while curtailing others, particularly on issues of sexual equality.

THE UNEXPLORED NEXUS OF WOMEN'S RIGHTS, ISLAM, AND DEMOCRACY

The rights of women in Islam are the topic of an impressive body of literature.[1] Simultaneously, the question of Islam and its compatibility with democracy

[1] Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven, CT: Yale University Press, 1992); Margot Badran, *Feminism in Islam: Secular and*

has also been the focus of a considerable amount of work. Interestingly, the nexus of women's rights, Islam, and democracy has been little analyzed, with the notable exception of Steven Fish's (2002) article, which considers the rights granted to women in Muslim societies to be a predictor of democracy. Fish argues that the status of women's rights explains the lack of democracy in Muslim societies, providing a provisional theory which links women's rights with regime type and therefore discards Islam as a cause of women's oppression. This would be quite relevant except that the deficit of women's rights in Muslim countries is actually linked to religiously based legislation, especially in the domain of civil law. Consequently, there is a need for a more nuanced analysis that considers the correlation between secularization and gender equality mediated by the rule of law and, when it comes to the influence of Islam, differentiates between civil law, political rights, and social rights (work/education).

In these circumstances, the aim of this collaborative project is to examine the complex relationships between democracy, secularism, Islam, and women's rights in order to make a critical and more fruitful contribution to the current debate on women and politics in Muslim countries. Our edited volume fills a gap in the existing literature by: (a) bridging two currently distinct threads of scholarly work: surrounding women's rights and Islam on one hand and Islam and democracy on the other; and (b) locating the current intersection of Islam, gender, and democracy in the broader field of women's rights, religion, and democracy in other countries, such as India, Israel, Spain, Poland, and France.

SECULARITY, DEMOCRACY, CIVIL LIBERTIES, AND WOMEN'S RIGHTS

The academic consensus is that modernization, democratization, and secularization are inextricably linked in any process of political development, and that the advancement of women's rights is the "natural" outcome of these intertwined processes.[2] This consensus operates on the premises of the secularization theory, whose core claims are twofold. First, the social significance of religion in modern societies is weakening in comparison to previous

Religious Convergences (Oxford: One World Publications, 2009); Afsaneh Najmabendi, *Women with Mustaches and Men without Beards: Gender and Sexual Anxieties of Iranian Modernity* (Berkeley, CA: University of California Press, 2005); Valentine Moghadam, *Modernizing Women: Gender and Social Change in the Middle East*, 3rd edn (Boulder, CO: Lynne Rienner Publishers, 2013).

[2] Yoshiko Ashiwa and David L. Wank, "Making Religion, Making the State in Modern China: An Introductory Essay," in *Making Religion, Making the State: The Politics of Religion in Modern China* (Palo Alto, CA: Stanford University Press, 2009), pp. 1–21.

periods.[3] Second, this decline of the social importance of religion is attributed to diverse processes of modernization. Three pillars: separation of religion and state, privatization, and decline of individuals' religiosity are usually considered to be the main features of secularization.

Our volume builds on the rich body of literature that has critically addressed these core assertions of the secularization paradigm. Most of the critique is aimed at the claim that religion is losing its significance in the modern era. Alternative approaches of secularization focus on social differentiation, which insists on the increased autonomy of social segments (economics, sciences, education, etc.) that were previously under the influence of religious doctrines or organizations.[4] Reduction of secularization to state–church institutional relations has also been criticized and even proven wrong.[5] For example, recent sociological data shows that democratization is not dependent on the separation of church and state—and that, in fact, government involvement in religion often increases as democracy grows, especially in Christian nations.[6] In the same vein, it has been argued by scholars such as Kaplan that the growth of democratization and secularization, even in the West, was not actually as smooth and linear as the narrative wants us to believe, and setbacks were inevitable.[7] Others reject the idea of an irreversible process of privatization of religious actors and institutions (José Casanova).[8] The most recent thread of these renewed approaches is the focus on religious pluralism and egalitarian individualism (Steve Bruce, Charles Taylor).[9]

[3] Bryan Wilson, *Religion and Sociological Perspective* (Oxford: Oxford University Press, 1982).

[4] Ibid.

[5] Jonathan Fox, "World Separation of Religion and State in the 21st Century," *Comparative Political Studies* 39 (2006), 537–69.

[6] Ibid.

[7] Benjamin Kaplan, *Divided by Faith: Religious Conflict and the Practice of Toleration in Early Modern Europe* (Cambridge, MA: Harvard University Press, 2007), pp. 333–58. For example, the European experience of democratization was part of a reaction to the religiously induced Thirty Years' War and to the rise of Enlightenment principles, which resulted in various forms of church and state separation. In other words, the differentiation of church and state experienced throughout Europe was the solution to end several decades of bloody religious wars during the sixteenth and seventeenth centuries. Ultimately, the matrix of long-term ideas—such as the necessity of separating religion and politics, the perception of religion as a disturbance in public spaces, and the idea that intertwining politics and religion creates absolute power—shapes political imaginary and cultures. This imaginary is continuously utilized by European political actors to build ideological arguments that secularization goes hand in hand with a decline of religion in the public space.

[8] José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994).

[9] Steve Bruce, "Modernisation, Religious Diversity and Rational Choice in Eastern Europe," *Religion, State & Society* 27:3 (1999), 265–75; Charles Taylor, *The Secular Age* (Cambridge, MA: Harvard University Press, 2007).

At the end, all these critiques are highly significant and have contributed to address secularism as a political negotiation over the accepted role of religion in public life rather than as an a priori category.[10] Interestingly, these sociological analyses of secularism have not yet been taken into account in political science, especially not in the studies that address Islam and democracy. In other words, when it comes to Islam and democracy, a quantitative/institutional approach to secularization dominates, which dismisses historical evolution and continuous struggle between political and religious actors over the meaning and boundary between religion and politics.

It is not surprising then, that most non-Western experiences of secularization have been measured and evaluated in comparison to *secularism*, which in this book will refer to the Western model of *secularity*. In other words, we consider secularism to be the Western political culture produced by multiple and imperfect embodiments of two principles: protection by law of all religions, and equidistance of the state vis-à-vis all religions. These principles are interpreted within specific political cultures that ultimately frame social expectations about the status of religion in public space. In the case of the West, these expectations are the separation of church and state, and privatization of religion, leading to its social decline as well as the decline of personal religiosity.

Consequentially, Turkey, Tunisia under Ben Ali, and Iraq under Saddam have been defined as secular, with the implicit assumption that they are (or were) aligning themselves on the Western principles described. These "secular" states have certainly attempted to diminish the role of religion in the public sphere. However, an irreversible decline of the social and political presence of Islam did not occur in any of these countries. Moreover, none of these states properly implemented a separation between Islam and the state, nor the recognition or protection of religious diversity, which, more than separation, is a critical factor in a secularization process. As described by Alfred Stepan, in "The Twin Tolerations," secularization entails a dual process of differentiation, in which "the minimal boundaries of freedom of action must somehow be crafted for political institutions vis-à-vis religious authorities, and for religious individuals and groups vis-à-vis political institutions."[11] In other words, states would not use religions for political purposes and grant equality to all religions, while religious groups would refrain from capturing state

[10] Jeffrey Hadden, "Toward Desacralizing Secularization Theory," *Social Forces* 65:3 (1987), 587–611; Mark Chaves, "Secularization as Declining Religious Authority," *Social Forces* 72:3 (1994), 749–74; Rodney Stark, "Secularization, R.I.P," *Sociology of Religion* 60:3 (1999), 249–73; William E. Connolly, *Why I Am Not a Secularist* (Minneapolis, MN: University of Minnesota Press, 2009); Brian Goldstone, "Violence and the Profane: Islamism, Liberal Democracy, and the Limits of Secular Discipline," *Anthropological Quarterly* 81:1 (2007), 207–35.

[11] Alfred Stepan, "Religion, Democracy and the 'Twin Tolerations,'" *Journal of Democracy* 11:4 (2000), 37–57, at 37.

institutions and politics for their specific religious purposes. While such equilibrium is never completely achieved, even in Western nations,[12] it can serve as a criterion to evaluate processes of secularization. In these conditions, almost all Muslim countries, even the ones dubbed as secular, fail on both accounts: that is, state equidistance vis-à-vis all religions and no encroachment of religion upon politics. We are therefore in dire need of reconsidering or at least broadening the existing approaches to regimes of secularity in order to make sense of their particular political experiences.

In these conditions, secularism too often refers to the dominant and taken-for-granted approach of the Western experience, which is a separation of state and religion, and non-religious references in the legal system. In such a classification, although some Muslim countries like Tunisia or Turkey are defined as secular, the status of citizens, the family life, and the definition of the nation involve a dominant religious element imposed on all members of the political community. Furthermore, it can be argued that, in these countries, Islam was indeed confined into private spaces, but this is not a sufficient condition to define them as secular because state actions did not translate into the neutrality and equidistance of the state vis-à-vis all religions.

Thus, the use of Western terms or Western techniques or cultural styles should not fool us into thinking that some of these countries went through a differentiation between Islam and politics, as experienced in Western democracies. Actually, quite the opposite occurred. The use of Western secular techniques in the law and the constitutions created a strong connection between Islam and politics, and contributed to the redefinition of Islam *as a political norm* in ways unknown under the Muslim empires.[13]

In order to have a better grasp of the regimes of secularity of Muslim countries, the different contributions in this book operate within an alternative approach that distinguishes between political secularization and social secularization. Political secularization refers to different forms of state–religion arrangements that grant equal treatment of religion by the state. Separation is only one of these arrangements and is not even the most common. Contrary to the dominant perception, all states, including the democratic ones, are involved in some form of regulation vis-à-vis religion (regulation/funding/

[12] For instance, please see the current debates on the status of Islam in Europe or the ongoing debate in the US on the First Amendment.

[13] M. Hakan Yavuz, *Islamic Political Identity in Turkey* (Oxford: Oxford University Press, 2003), p. 52. Specifically in the Turkish case, Hakan Yavuz explains, "As a result of nation-building and militant secularization, society came to be divided along the now familiar cleavages of Turkish versus Kurdish and state versus society. In contrast, the caliphate, abolished in 1924, had represented an Islamic sanctioned union of multi-ethnic groups and had recognized ethnic diversity without assigning it any political role. In other words, the caliphate was the symbol of a multi-ethnic polity and authority; it symbolized the unity of Muslims as a faith-based community and allowed space for diverse loyalties and local autonomy for the periphery."

restrictions). In other words, what dominates are actually multiple ways of accommodation between state and religion that are related to the history of the state in each country and how the nation-state interacted with existing religions. Accommodation is the way the state moved away from an historical privileged relation with one church to the recognition of equal rights for all religions, without automatically cutting off links with religions. Accommodation takes multiple forms, from the equidistance of state and religions, to regulation of religions by the state (authorized religions, state support of religions). In contrast, hegemon refers to the situation where the state maintains exclusive privileges with one church or religious organization and does not recognize others. More specifically, hegemonic religion refers to lack of institutional separation, the exclusive social role of one religion, and limited recognition of religious pluralism at the individual level; this characterizes most Muslim countries, including ones, like Turkey or Tunisia, dubbed as secular.

Sociological secularism entails all forms of social visibility of religion: political debates based on religious claims (abortion, contraception, blasphemy, dress code, environment, welfare, political rights), social activism of religious groups, and the presence of religious symbols in public discourses. Degrees of privatization and social legitimacy of all religions in public spaces define the status of social secularism.

No country is at the same point on each of these levels, making it impossible to have a "one size fits all" model of secularity. For example, it can be said that France and the United States share institutional secularity, but differ greatly on the status of religion in society or at the level of individuals. The same is true for the regimes of secularity specific to Muslim countries. Thus, we can say that France and Turkey share a certain illegitimacy of religion in social life, but do not provide the same legal and institutional status to religions. Finally, there is certainly a stark difference between the French and Turks when it comes to the importance of religion in their daily lives.

Women's rights straddle both political and social secularization: when religion and the state are connected institutionally, this translates into laws that can limit women with regard to politics, employment, civil laws, and reproductive rights. When religion is socially relevant, it also translates into a gendered perception of public space that affects women's mobility and social interactions. Introducing these two levels of secularization and showing how they interact sheds light on a more complex and contextualized approach to secularity than simply the separation of religion from secular institutions in public life. It is in this continuously evolving site of interactions between institutional and social secularization that the relationship between women's rights and democracy will be analyzed. In this regard, José Casanova points out, in Chapter 2, that the question of women's rights did not arise during the second and third wave of democratization in Catholic countries because the state and the church had become "disentangled," while Islam remains

hegemonic in most Muslim countries. In the same vein, the privatization of religion, often seen as a condition for the advancement of women's rights, does not seem as clear or straightforward once the social dimension of secularization is introduced. For example, Joan W. Scott shows that the private/public divide introduced by the secularization of state–religion relations in France actually favored women in the private space and therefore impacted on their political and social rights. In Muslim countries, on the contrary, the secularization process introduced by postcolonial nation-states led to the advancement of political, economic, and social rights of women. This means that while secular state actors gained control of religious organizations and personnel, they also undermined the legitimacy of Islamic practices and signs in public spaces, notably by unveiling women and granting them rights. Interestingly, the promotion of women's rights did not clash with traditional Islamic interpretations or necessitate reinterpretations of the religious traditions to justify it.[14] That is why, contrary to the common perception, Saudi Arabia or Afghanistan under the Taliban are actually not representative of the Islamic tradition when it comes to women's status. The contestation of these rights in most Muslim countries has been a recent turn, brought by the growing Salafi interpretation of Islam, embodied in transnational movements. At the same time, in most countries, we witness a distinction: economic/political/social rights being advanced while rights related to divorce and family retain gender inequality and are often based on Islamic precepts. Iran is a case in point: under the Islamic Republic, the education, economic, and political rights of women have not been curtailed (quite the opposite in fact), but the rights to marry and divorce are still constrained by Islamic rules, maintaining a gender inequality in the family that does not match the social advancement of women. Interestingly, in the non-Muslim countries, like India and Israel, presented in this volume, the limitations on women's rights when it comes to religion are also at play in the laws about marriage, divorce, polygamy, and so on. In this regard, it is important to identify which domains of rights are negatively affected by religious prescriptions. Except extreme cases like Afghanistan or Iraq under ISIS, it seems that individual rights about education, employment, and politics have gradually been granted to women, while reproductive rights as well as sexual rights remain under religious influence, even in democratic countries. In other words, individual rights seem distinct from the rights of the self.[15] It is exactly on such issues that the Catholic Church is also resisting complete equality between genders, even in advanced democracies.

[14] After the 2011 Revolution, in an attempt to counter the Salafi political rise, Al-Azhar University issued, in 2012, a Bill of Rights of Women, reminding Egyptians that, in the Islamic tradition, women are allowed to work, be citizens, and receive an education.

[15] Jocelyne Cesari, *The Awakening of Muslim Democracy: Religion, Modernity and the State* (New York: Cambridge University Press, 2014).

Additionally, while the implementation of these individual rights has been problematic everywhere, it has been notably more difficult in Muslim-majority countries because of the resilience of patriarchal cultures, especially in rural areas.

Another interesting feature that clashes with the dominant view of secularism is that these advancements were made by authoritarian regimes, contrasting with the development of women's rights in European countries that followed closely the democratization process. Therefore, the political development in Muslim countries brings a more complex and multilayered approach to democracy that resonates with current debates in political science on hybrid regimes. Most Muslim countries qualify as hybrid in the sense that some elements of democracy are present (elections/judiciary), while others are missing or weak (separation of power, rule of law). In this perspective, the distinction between procedural and substantial democracy helps us to understand how the status of civil liberties and human rights are critical to women's rights. More specifically, accepting elections, division of power, rule of law, and individual rights does not translate into the acceptation of a complete formal equality between genders. In other words, accepting democracy does not lead automatically to ideological liberalism when it comes to women's rights, religious minorities' rights, and freedom of speech. Therefore, the different contributions reveal the central role of the state, not only in the modernization of women's rights, but also in the reshaping of religious norms on women's status.

STATE, WOMEN, AND ISLAM

Since the 1960s, the state has become a central, if not the most important, agent redefining Islamic law and religious orthodoxy, leading to a reshaping of Islamic norms. Such a redefinition of Islamic norms is at odds with the dominant perception of secularism as a disassociation between public behavior and religious norms. The female body has become the main site of this politicization of Islam, by state and non-state actors alike. The politicization of the female body has been a general feature of Muslim societies from the colonial to postcolonial periods. A consistent theme throughout has been the idea that women are the symbolic embodiment of morality, and therefore are the key to securing familial, national, and religious values in the uncertain maelstrom of social change.

This political discipline imposed on women's bodies has taken opposite directions. As we will see in the examples of Turkey and Tunisia in Chapters 2 and 11, state intrusion led to an unveiling of women as citizens of the modern nation. More recently, however, Islamic dress code has been imposed on women as part of a redefinition of citizenship. Iran after the Islamic Revolution

of 1979 is a case in point, as morality police enforced strict Islamic dress codes, including the hijab and the chador. In some ways, the chador was actually a symbol of the success of Khomeini and the Islamic Revolution, and women wore Islamic dress as a sign of support. At the same time, when women wanted to express their individuality through Westernized clothes, this was also interpreted as a political stand and was therefore repressed. Nowadays, the ways Iranian women wear their headscarves reflect political positions from "liberal" and "free" to conservative. Instead of wearing the black scarf as traditionally instructed, women began to wear again the brightly colored scarves that revealed more of their hair, especially in urban areas such as Tehran. As a result, there have also been a growing number of reports of arrests and citations for women wearing "bad hijab."[16]

The same trend emerged in Afghanistan under the Taliban, or in Chechnya, where women have been harassed and abused by individuals and law enforcement agents, and some have even been shot at by paintball guns if they were seen without the hijab.[17] After the overthrow of former president Alu Alkhanov and the rise of Ramzan Kadyrov as "head" of the Chechen Republic in 2007, an Islamic "virtue campaign" has become a priority for the Chechen state. Kadyrov has been known to support de facto "modesty laws" and "headscarf rules" that prohibit women from working, going to school, and going out in public if they do not wear headscarves. Furthermore, he has openly acknowledged polygamy and honor killings as valid parts of Chechen society.[18]

This political discipline of the body is far from being a specificity of Muslim-majority countries. The legislation against the hijab and niqab in European countries proceed from the same logic. The specificity lies in the conflation between the moral hierarchy of gender roles and the legitimacy of the national community; this connection has been severed in most Western countries. In Chapter 2, we will show how, in Egypt and Pakistan, Islamic prescriptions can be used to redefine the good citizen, particularly during periods of political instability. As greater social mobility for both men and women threatens existing governmental structures and power, the principles of family are evoked in order to mitigate social change. These principles feed into the dominant status of gender hierarchies, thus politicizing what had

[16] Frances Harrison, "Crackdown in Iran over Dress Codes," *BBC News*, April 27, 2007, <http://news.bbc.co.uk/2/hi/6596933.stm>.

[17] "You Dress According to their Rules," *Human Rights Watch* (2011), available at: <https://www.hrw.org/report/2011/03/10/you-dress-according-their-rules/enforcement-islamic-dress-code-women-chechnya> (accessed November 5, 2016).

[18] It should be noted that these so-called laws are not actual legislation, but social and political codes that were instated in 2007 by a public television announcement by Kadyrov. However, Kadyrov has made enforcing these dress codes a matter of national duty and part of a new form of citizenship, commending men who harass women for not wearing modest Islamic dress.

been strictly the social sphere in premodern Muslim societies. As conceptions of family are implicated in the political consciousness and the formation of national identity, Islam becomes construed in a way that permits gender inequality as a means of maintaining social harmony. The control of women and maintenance of gendered moral hierarchies render a sense of national security and authority over conditions of social change that cannot be easily controlled. However, through this process, Islam becomes incorporated as a means of political ideology to serve the state.

In sum, to restitute these complex social processes between the state, women's groups, and Islamic actors, this volume will pay particular attention to state policies vis-à-vis women and draw comparisons with the situation of women's rights in some Western (Catholic countries) and non-Western democracies (India, Israel). It will also highlight the influence of transnational movements and feminist discourses, both Islamic and secular, on women's rights debates and policies in different national contexts.

OUTLINE OF CONTENT

Part I of the book will specifically address the nexus of religion, law, gender, and democracy through different disciplinary perspectives (sociology, anthropology, political science, law). The common point of all contributions in this section will be to question the taken-for-granted religious/secular divide across countries by addressing the two following questions:

(1) *What are the dominant religious and secular conceptions of women's rights of both civil society and state actors and how do they interact with different political forces and institutions to shape democracy?*

As discussed in this Introduction, the state has been a central actor in the shaping of women's rights, advancing them by law in some domains (work/education), curtailing them in others (civil law), often by using religious references. This centrality of the state shapes women's rights agendas for both secular and feminist activists, as well as their relation to religious discourses and figures, unlike the progressive dissociation between political actors and religious authorities that characterizes the discourse and politics on women's rights in Western democracies. The chapters in Part I examine state actions, including the rule of law and what kind of interactions and political mobilizations it generates among religious movements and feminist activists and how it contributes to the shaping of religious interpretations of women's rights. Looking at state actions vis-à-vis women's rights, Joan W. Scott argues in Chapter 3 that even in democracies like France, the secular state adopted a gendered approach to justify the separation of church and state. In Chapter 1,

Jocelyne Cesari shows that the state has been the major agent in the evolution of religious discourses about women's rights in Muslim-majority countries like Egypt, Turkey, and Pakistan. In Chapter 4, Robert W. Hefner emphasizes the continuous tensions between the state actions vis-à-vis women's rights in Indonesia and hermeneutics or legal–religious communities, including feminist ones that advocate an advancement of women's rights within the religious framework. In the same vein, in Chapter 7, Yüksel Sezgin argues that the position of the religious group vis-à-vis the state is a major factor in the changing interpretation of Islamic law and women's rights.

(2) *How do women's rights activists shape international efforts to exert pressure for human rights upon particular countries?*

The last decade has seen a concerted effort by international organizations to remove women's rights from the sole jurisdiction of nation-states. In Chapter 5, Susanne Schröter will explore the role of religious factors in the strategies of states and international institutions around these questions, as well as the pressures exercised by religious actors themselves. A key issue is how transnational religious activism relates back to both religious approaches to government policy and to the basic understandings of human rights in general and women's rights in particular. Another aspect is how this transitional religious activism competes with transnational secular feminist groups and what the respective political influence of these two trends is in different national contexts and specifically on state actions and legal systems.

Part II will localize the implementation of this nexus between law, gender, and democracy, and provide contextualized responses to the questions mentioned in different cultural and political settings: Iran, Malaysia, Tunisia, Morocco, Senegal, and Bangladesh. It will also explore the situation of Muslim women's rights in minority conditions both in the West (USA/Europe) and outside the West (India, Greece, and Israel). The common denominator of Chapters 6–11, by, respectively, Katherine Marshall, Yüksel Sezgin, Vrinda Narain, Ziba Mir-Hosseini, Valentine Moghadam, and Maila Stivens, will be to shed light on the gender politics in the modernization of the nation and to ponder over the role of Islam in gender inequality across different Muslim countries.

Part I

The Nexus of Religion, Gender, and Democracy

1

State, Islam, and Gender Politics

Jocelyne Cesari

INTRODUCTION

The commonly held picture of Muslim women is of the black-clad, secluded women of Saudi Arabia. However, this is akin to looking at the condition of Christian women through the lens of Amish communities in the United States. The Saudi interpretation of Islam is a modern construction that deviates from the tradition of Islam. It fails to take historical and cultural context into consideration and pushes women back into the tribal condition that was the norm during the time of the Prophet Mohammed. There is nothing in the Islamic tradition that prevents women from working, getting an education, or partaking in public social and political life. In fact, many times, the interpretations within the religious traditions have been ahead of the cultural norms and traditions common before Islam: for example, women cannot inherit lands in the Berber zones of North Africa—while such a custom contradicts Islamic rules. At the same time, the social and political advancement of women lags behind in most of the Middle East and North African countries. So how do we make sense of the diverse, and often contradictory, situation of women across Muslim countries today?

There are countless responses to this question from scholars of Islam and of feminism, mostly emphasizing the historical evolution of women's rights since the Qur'anic revelation. This scholarship argues that, at its foundation, Islam advanced women's rights in the context of premodern tribal societies, but the evolution of Muslim polities from medieval to premodern times led to the segregation and seclusion of women. These analyses focus on the theological debates at these different historical moments or the variety of religious practices of women in different contexts.[1]

[1] Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject*, 2nd edn (Princeton, NJ: Princeton University Press, 2011); Lila Abu-Lughod, *Do Muslim Women Need*

Another thread of scholarship explores the influence of Islam on the political changes in Muslim countries but neglects the historicity of women's rights in Islam. This is, for example, the limitation of Steven Fish's article, which is one of the rare articles linking democracy, Islam, and women's rights.[2] He contends that the lack of democracy in Muslim countries cannot be attributed to Islam per se but to the deficit of women's rights. This explanation, however, ignores the fact that women's rights have advanced in some areas (formal equality in education and employment) and not in others (family law) since the Second World War. This is because the resistance to reform in domains like family law and sexuality directly relates to the influence of Islamic norms.

To avoid the strong dichotomy and somewhat contradictory ways of analyzing the interplay between women's rights, Islam, and democracy, this chapter will argue that Muslim women's rights are shaped by: (1) the modernized forms of Islam linked to the emergence of the postcolonial state; and (2) the overall theological discussions of women's rights in Islam that take place within this state framework, as shown in case studies from Algeria, Egypt, Turkey, and Pakistan.

Such an approach is not without challenges because, as Elham argues, within feminist tradition there is little to no analysis linking gender, politics, and the state.[3] Unless a researcher remains within conventional comparative politics, creating a theoretical link between gender and the state is difficult. According to Elham, feminist analyses portrayed the state as either a tool for social progress or a tool of patriarchal oppression. To avoid such a drastic dichotomy, some scholars have taken a different approach by developing cross-country analyses and focusing on state policies toward women. Following in the steps of scholars such as Georgina Waylen and Vicky Randall,[4] I will argue that the authoritarian postcolonial nation-state has been a central agent of the redefinition of the Islamic tradition as well as of the advancement of women's rights. This gendered politics is the framework for current religious debates on women's rights and the debate on Islam and democracy. In other words, any debate on the influence of Islam on democracy and women's rights must be situated in specific political, legal, and institutional contexts rather than solely in an analysis of clerical debates around the Qur'an, the Hadith, and women's rights.

Saving? (Cambridge, MA: Harvard University Press, 2015); Lila Abu-Lughod, ed., *Remaking Women: Feminism and Modernity in the Middle East* (Princeton, NJ: Princeton University Press,1998).

[2] M. Steven Fish, "Islam and Authoritarianism," *World Politics* 55/1 (2002): 4–37.

[3] Elham Manea, *The Arab State and Women's Rights: The Trap of Authoritarian Governance* (Abingdon and New York: Taylor & Francis, 2012), p. 236.

[4] Vicky Randall and Georgina Waylen, eds., *Gender, Politics and the State* (London: Routledge, 2012).

STATE, RELIGION, AND GENDER POLITICS

The nexus of Islam, gender, and democracy has to be traced back to the foundation of the postcolonial nation-state. This moment led to the state's appropriation of the interpretative role of the religious tradition, and subsequently solidified its influence on Islam and the women's rights debate.

Modernization and Nationalization of Islam

Under the historical caliphates, clerics were independent of the political power. They could of course be solicited or consulted by the caliphs, but they retained intellectual and financial independence.[5]

In the same vein, the Ummah did not refer as of today to the global community of Muslim believers. It used to describe the totality of territories under the rule of the caliph, which at the time encompassed multiple languages, religions, and ethnicities.[6]

As the Ottoman Empire collapsed, the emergence of the state as the central political institution correlated with the homogenization of different national communities. That is, nation-building systematically omitted and sometimes eradicated particular ethnic, religious, and linguistic groups in order to create one nation defined by one religion and one language. This homogenization process also led to a politicized narrative of religion, that is, political Islam. In this regard, Muslim countries are not exceptional; with the advent of the modern nation-state, the rules of engagement between religion and politics have been redefined everywhere. Contrary to the dominant liberal narrative, however, this does mean that, in Muslim countries, religion has not become politically irrelevant.[7]

The emergence of new political norms tied to nationalism generally resulted in state narratives that either referenced Islamic terminology or were deliberately articulated within an Islamic framework. Localization of these norms occurred as state actors employed strategies of entrepreneurship, reframing

[5] Hamid Enayat, *Modern Islamic Political Thought* (London: I.B. Tauris, 2005); Ira M. Lapidus, *A History of Islamic Societies*, 2nd edn (Cambridge: Cambridge University Press, 2002).

[6] Richard DeAngelis and Riaz Hassan, *Faithlines: Muslim Conceptions of Islam and Society* (Oxford: Oxford University Press, 2002), p. 94.

[7] This dominant political narrative does not necessarily reflect the cultural and political evolution even in the West. Modern secularism, as it is generally understood, has introduced substitutes for theistic religion. These substitutes have taken a bewildering variety of forms; for example, dedication to charismatic leaders, such as Mao and Stalin, resemble behavior exhibited by religious movements. Eliade Mircea, *Myths, Dreams and Mysteries: The Encounter between Contemporary Faiths and Archaic Realities* (New York: Harper & Row, 1961), pp. 205–6.

these norms using local vocabulary.[8] In other words, Islamic references and norms were used to "localize" the nation-building process and legitimize state actors and policies. The outcome of such localization was the redefinition of Islam within the new state institutions.

The adoption of outside norms into local contexts also involved grafting and pruning. These two tactics are frequently employed by local actors to institutionalize external norms by associating them with pre-existing ones. Here, proponents of new norms must carefully construct and articulate links because these links are not always intuitive or natural. In Muslim countries, pruning and grafting have primarily taken place through three mechanisms: references to Islam in the constitution, nationalization of Islamic institutions, and the incorporation of Islam in the legal system.

In most Muslim-majority countries, Islamic parties do not have a monopoly on political Islam—Islam is a foundational element of the nation-states. Although most of the founders of Muslim-majority countries were indeed westernized, they nevertheless included Islam in the state apparatus, spurring its politicization by turning it into a modern national ideology operating as a common denominator for all political forces, secular or otherwise. As such, political Islam should be understood in a broader context that goes beyond Islamist political ideology or Islamic parties.

In my book, *The Awakening of Muslim Democracy: Religion, Modernity and the State*, I argue that both the state and the Islamists have been instrumental in politicizing Islam. In this broader sense, political Islam includes the nationalization of Islamic institutions and personnel under state ministries and the use of Islamic references in law and national education. More specifically, the adoption of the nation-state by Muslim-majority countries after the collapse of the Ottoman Empire in 1918 has been the decisive political change leading to the reshaping of Islamic values and institutions. These changes have translated into a brand new status of the religion that I call the hegemonic status of Islam.

First, it is important to note the difference between a dominant religion, an established religion, and a hegemonic religion. A religion is dominant when it is the religion of the majority of a given country. In such cases, the dominant religion continues to impart historical and cultural references considered "natural" and "legitimate." Religious symbols and rituals become embedded in the public culture and the country. Examples of such dominant religions include Protestantism in the United States or Catholicism in France and Poland. An established religion is one recognized by law as the religion of the country or the state and sometimes financially supported by the state, like the Church of Denmark. The existence of an established church is not necessarily incompatible with the legal protection of religious minorities and

[8] Amitav Acharya, "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism," *International Organization* 58/2 (2004): 239–75.

freedom of speech. A religion becomes hegemonic, however, when the state grants a certain religious group exclusive legal, economic, or political rights denied to other religions. In other words, religious hegemony refers to legal and political privileges granted to a specific religious group, which in most, but not all, cases is the dominant religion.

Second, hegemonic religion and states' regulations of religion are not the same. The latter may assume several forms, with legal neutrality on one end of the spectrum, legal privilege on the other end, and many nuances in-between. Legal neutrality, as understood and codified in most secular democracies, entails recognition and legal protection of all religions. Separation of religion and state is not a necessary prerequisite for legal neutrality, which can be implemented even when there is state cooperation with religions (e.g. most European democracies). It is worth noting that legal neutrality does not mean that the practice of law is always neutral. Frequently, the dominant religious group serves as an implicit standard for the legal work concerning other religious groups. Most importantly, legal neutrality has been continuously challenged throughout history by discriminatory political practices. One of the most recent examples is the post-9/11 increase of restrictions on Muslim minorities in Western European democracies.

The unexpected and often unseen consequences of legal privilege are state restrictions and controls over the activities of the official religion. These usually involve:

- A ministry of religious affairs and administration to manage the official religion;
- government regulation of the use of religious symbols or activities;
- state laws and policies that limit freedom of expression (apostasy laws);
- penalties for the defamation of the official religion (blasphemy laws); and
- government interference with worship.

The other side of legal privilege is the tacit or explicit discrimination of religious groups not recognized as the official religion.

To summarize, the hegemonic status of a religion is a combination of two or more of the following characteristics: nationalization of institutions, clerics, and places of worship of one religion; insertion of the doctrine of that religion in the public school curriculum (beyond religious instruction, that is, in history, civic education, and so forth); and legal restrictions on freedom of speech and expression as well as women's rights (including marriage, divorce, and abortion) based on the prescriptions of that religion. Most Muslim-majority countries, including Turkey, possess two or three of these features. The only exceptions are Lebanon, Senegal, and Indonesia. Although discriminatory practices do still exist in these countries, the three are, interestingly, the only ones that qualify as democracies, according to the Freedom House index.

The outcome of the homogenization process is a politicized narrative of religion or political Islam. Under these conditions, the dominant Western narrative of modernization cannot help explain this process because it contains an inherent assumption that secularization leads to the decline of religion in the political sphere. The invention of Islam as a modern religion is closely associated with the building of the nation-state. The efforts by these "secular" states to limit the social influence of religion actually led to a nationalization of religious identities and, therefore, to their politicization, defying the expectations of earlier modernization theories.[9]

From the time of nation-building, Islam has been acknowledged in most constitutions and has often been inscribed into the constitutional foundations as the religion of the country. In such countries, it has subsequently been recognized as the state religion. Such recognition occurred even when the founders of the state maintained a very secular orientation. What then followed are the nationalization of Islamic institutions, state-ordained religious education in public schools, and the enduring (albeit limited) legacies of Shari'a law in the legal system.

As a result, political and social modernization in Muslim countries stands in stark opposition to the dominant Western narrative, in which individuals' religious identities departed from their national identities, becoming increasingly privatized with the expansion of political and civic rights. In other words, there is often a correlation of national and religious identities in present-day Muslim countries. This fusion produces a moral hierarchy in which the national government intervenes in the personal lives of its citizens on topics ranging from dress to social relations, and even culture.

As a result, the state policy vis-à-vis Islam and Shari'a went hand in hand with a modernization effort to provide gender equality in education, economic, and political rights.

Women's Rights Advancement by Authoritarian Regimes

The gender equality policies adopted by most Muslim postcolonial states certainly had positive consequences on the advancement of women's education and social conditions in general.

This advancement, under authoritarian rule, led to a dichotomy between social and political rights on the one hand and reproductive rights on the other. Islamist actors further exploited this dichotomy.

[9] Hermann Landolt and Todd Lawson, *Reason and Inspiration in Islam: Theology, Philosophy and Mysticism in Muslim Thought* (London: I.B. Tauris, 2005), pp. 1–2, 7, 12; Burgis, "Faith in the State," 76–7.

Education and health rights

Gender gaps have significantly improved in the education and health domains over the past decades, although women's literacy rates still lag behind men's in many Muslim-majority countries. When gaining independence, countries such as Morocco, Algeria, Tunisia, Turkey, Pakistan, and Egypt recognized the relevance of women's education and health for increased economic prosperity and controlled population growth. The education gap between sexes narrowed significantly on all three levels of education. According to the *Global Gender Gap Report*,[10] for example, Algeria achieved gender parity in tertiary education enrolment rates with countries such as France and the United States. Considerable investments in human capital have improved education and health, but have not substantially improved women's economic opportunities and participation.[11] Furthermore, differences between rural and urban areas are especially pronounced in education attainment levels. For example, the Organisation for Economic Co-operation and Development (OECD) gender index notes that,[12] in Moroccan rural areas, girls are 33 percent less likely to attend school than boys, indicating an overall preference toward educating sons over daughters. Additionally, educational attainment in our case study countries is below average in comparison to countries with similar income levels, except for Egypt. When it comes to health, according to the *Global Gender Gap Report*, Egypt, Algeria, and Pakistan exceed the average within their income group.

Political rights

As countries gained independence, the emergence of the nation-state brought, in most Muslim countries, initial gains for women's political rights—women were granted the right to vote and to be elected. However, discrepancies between liberalizing legal frameworks and actual women's representation reflect the dominance of traditional social norms and a prevailingly patriarchal political system. When considering the political rights of women in Algeria, Egypt, Pakistan, and Turkey, one has to keep in mind that both men and women experienced restrictions to their civil and political rights. This is a caveat for the evolution of women's political rights at large. As the *Arab*

[10] World Economic Forum (WEF), "The Global Gender Gap Report 2014," July 14, 2015, <http://www3.weforum.org/docs/GGGR14/GGGR_CompleteReport_2014.pdf>.

[11] World Bank, "Opening Doors: Gender Equality and Development in the Middle East and North Africa," June 2, 2013, p. 7, <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/02/07/000356161_20130207123902/Rendered/PDF/751810PUB0EPI002060130Opening0doors.pdf>.

[12] "Country Profile: Morocco," *OECD Social Institutions and Gender Index*, July 9, 2015, <http://genderindex.org/country/morocco>.

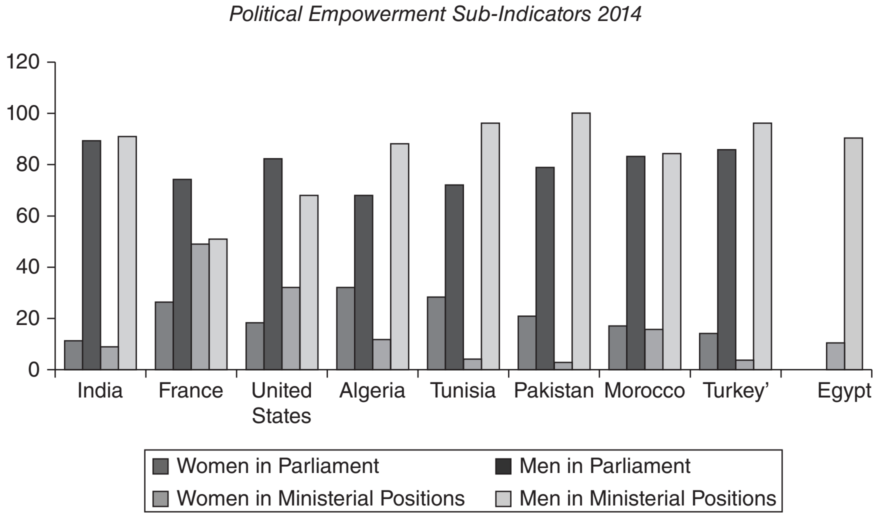


Figure 1.1 Representation of women and men in parliament and ministerial positions according to the *Global Gender Gap Report 2014*.
Source: World Economic Forum, Switzerland, 2014.

Human Development Report argued, appointments of women in governmental bodies should not be mistaken for structural improvements for women's political rights, because ruling regimes often appointed women from the elite and as window dressing for the incumbent regime.[13] Further, the low level of women's political empowerment is by no means a unique challenge to Muslim-majority countries.

Although countries categorized as part of the Middle East and North Africa by the World Economic Forum (WEF) have, on average, the largest gender gaps and mostly rank in the bottom global quartile, Western countries like the United States have similarly low scores in women's representation in governmental bodies. The *Global Gender Gap Report* depicts a political empowerment score where *zero* represents inequality and *one* indicates gender parity. This report reveals almost equal levels of empowerment in the United States and Algeria, which are nearly half the political empowerment scores of France or India.

Turkey was one of the earliest Muslim-majority countries to extend the suffrage to women for municipal elections, in 1930, seven years after the

[13] United Nations Development Programme, Regional Bureau for Arab States, Arab Fund for Economic & Social Development (UNDP, RBAS, AFESD), *The Arab Human Development Report 2005: Towards the Rise of Women in the Arab World*, vol. 4 (Stanford, CA: Stanford University Press, 2006).

declaration of the Republic of Turkey. In 1934, Turkey granted full universal suffrage on the national level. These reforms promoted women's political rights as part of a greater project of Turkish modernization under Atatürk's reforms.[14]

However, a greater voice for women in Turkey's polity did not translate into a comparable representation of women in political bodies. Turkey does not have quotas for women in either their constitution or in political party laws. At the same time, Turkish parties such as the Republican People's Party (CHP) and the Peace and Democracy Party (BDP) have a 33 percent and 40 percent women's quota, respectively. In 2013, women held 79 out of 550 seats in parliament, highlighting an increasing trend of female representation in the Turkish parliament since 2002. For example, the general elections of June 2015 led to the unprecedented number of ninety-six seats won by women. Nonetheless, women's political representation is far lower at the local level. Out of 2,921 mayors in the country, 27 are women. According to the *Global Gender Gap Report*, the female-over-male ratio in ministerial positions is 0.04 and, in parliament, 0.17.

In Pakistan, women gained the right to vote in 1947. Although the *Global Gender Gap Report* indicates a trend toward increasing women's political empowerment, Pakistan's gender gap was ranked second to last overall in 2014. Only Yemen has a greater gender gap than Pakistan. Against the backdrop of this knowledge, legal advancements in women's political rights, such as the establishment of a quota in the National Assembly, provincial assemblies, and the Senate, appear insufficient. As of 2014, there were sixty-seven women serving in the National Assembly (20.7 percent) and seventeen (16.5 percent) in the upper house. In 2014, there were no women in ministerial positions. In comparison with other lower-middle-income countries, Pakistan's political empowerment score remains below average (see Figure 1.1). Pakistan's scores are similar to Tunisia's, but Tunisia is considered one of the most progressive countries in the region on issues of women's political rights.

In 1956, Egypt became the next country in the region to pass a law establishing universal suffrage. Under Nasser, equality of opportunity for men and women was included in the 1956 constitution. In particular, legal changes catalyzed women's participation in the labor force. In contrast to the rapid improvements of women's economic rights and opportunities in the 1950s and 1960s, women's participation in political life remains limited, while equal rights with men in marriage, divorce, and custody of children is still a struggle. The limited political liberalization under Sadat and Mubarak did not significantly further women's political rights; liberalizing decrees for women were, rather, a reflection of the dominant political interest at the time and

[14] Fatma Müge Göçek and Shiva Balaghi, eds., *Reconstructing Gender in the Middle East: Tradition, Identity, and Power* (New York: Columbia University Press, 1994), p. 104.

women's organizational activity was often co-opted or constrained by the political systems in place.[15] The history of limited political participation of women in Egypt is reflected in the global gender gap index on political empowerment. Egypt ranks lowest as compared to the other selected countries in Figure 1.1. It is also at the bottom of the range of lower-middle-income countries. Although Egypt's political empowerment score shows an upward trend, it remains Egypt's lowest performing indicator. This increase is related to a 12.6 percent quota for women's representation in the People's Assembly, introduced in 2009. In 2014, the quota was amended to raise women's representation in the houses of representatives and the amendment established that 25 percent of local council seats must be allocated to women.

The history of women's political rights continues to evolve in Algeria where, in 1962, the year of national independence, women gained the right to vote. In 2008, the Algerian constitution was amended to include equal civil and political rights for women, granting them the status of full citizens. In 2012, Algeria introduced a quota to promote women's participation in political life on the national and subnational level. That means about 20 percent and 50 percent of parliamentary candidates have to be female, depending upon the number of seats in each electoral district. These legal changes are reflected in Algeria's political empowerment score, which jumped from 2011 to 2012 by a factor of four. In 2014, Algeria's gender gap was minimally larger than that of the United States and above the average in upper-middle-income countries. Women represent 12 percent of ministerial and 32 percent of parliamentary positions in Algeria. The United States has equally low levels of representation, albeit reversed: 18 percent in parliamentary and 32 percent in ministerial positions.

Economic rights

Over the last thirty years, equal economic opportunity advanced to a limited degree in many Muslim-majority countries. Although improvements were made in liberalizing laws, the rate of female labor participation remains the lowest in the world. The 2006 *Arab Human Development Report* recognizes that there is a true undervaluation of women in comparison to other lower-middle-income countries.[16] The report further acknowledges that the terms and conditions of work are the most limiting factors for women to engage in economic activity. Examples include inflexible parental leave regulations and low levels of financial literacy among women. Furthermore, according to a 2015 study by the International Monetary Fund (IMF) on the impact of the

[15] Mervat F. Hatem, "Economic and Political Liberation in Egypt and the Demise of State Feminism," *International Journal of Middle East Studies* 24/2 (1992): 243.
[16] UNDP, RBAS, AFESD, *The Arab Human Development Report*, p. 6.

gender gap on the economic development of a country,[17] divorce risk is a factor that influences women's decisions on whether they participate in the labor force.[18] Legal provisions are influential because they can determine incentives for women to work.

On a global scale, according to the World Bank Women, Business and Law database,[19] 90 percent of the sampled economies have at least one gender-based legal restriction in place, indicating that equality in economic opportunity is a worldwide challenge. For example, Egyptian non-pregnant and non-nursing women cannot do the same jobs as men as they are not allowed to work the same night hours as men (Labor law No. 12 of 2003, Arts. 89 and 90 and Decree No. 155/2003).[20] Generally speaking, Muslim countries have disproportionately high gender gaps in economic participation and opportunity, as seen in their incessantly below-average WEF scores.[21] An IMF study finds that raising the female labor force participation rate to country-specific



Figure 1.2 The score on economic participation and opportunity in selected countries according to the *Global Gender Gap Report 2014.*

Source: World Economic Forum, Switzerland, 2014.

[17] The economic development of a country is measured in GDP per capita percentage increase.

[18] Christian Gonzales, Sonali Jain-Chandra, Kalpana Kochhar, and Monique Newiak, *Fair Play: More Equal Laws Boost Female Labor Force Participation* (New York: International Monetary Fund, 2015), p. 12.

[19] "Women, Business and the Law: Creating Economic Opportunity for Women," *World Bank Group*, July 14, 2015, <http://wbl.worldbank.org/>.

[20] "Women, Business and the Law: Creating Economic Opportunity for Women—Egypt, Arab Rep," *World Bank Group*, July 9, 2015, <http://wbl.worldbank.org/data/exploreeconomies/egypt-arab-rep/2013#getting-a-job>.

[21] WEF, "Global Gender Gap Report 2014," pp. 24–5.

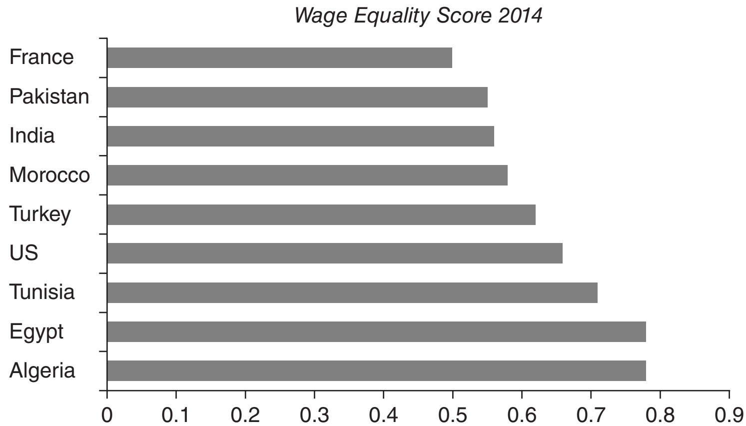


Figure 1.3 Wage equality between women and men for similar work converted to a female-over-male ratio.

Source: World Economic Forum, Switzerland, 2014.

male levels would increase the GDP in Egypt by 34 percent and in the United Arab Emirates by 12 percent.[22] Figure 1.2 depicts the *Global Gender Gap Report*'s score on economic participation and opportunity for a number of selected countries. The figure shows that Western countries such as France and the United States have significantly higher scores, closing 70 to 80 percent of the gender gap, while in lower ranked countries such as Pakistan only 20 percent of the gender gap is completed.

The *Global Gender Gap Report* documents an interesting nuance with regard to wage equality between the often better-performing Western countries and the lower-performing Muslim countries. Equal pay for equal work is one of the dominant topics in Western countries' political debates. Figure 1.3 shows that, in comparison to Muslim countries such as Algeria, Egypt, or Pakistan, Western countries have greater gaps in paying women the same as men for equal work. France completes just above 50 percent of the gender gap and the United States ranks below Tunisia, Algeria, and Egypt in terms of wage equality. An IMF report explains the relatively narrow wage gap in the selected countries by the small share of women in wage employment who are more highly educated than their male colleagues.[23] Therefore, it is impossible to infer that Muslim countries have better legal or policy frameworks in place that regulate wage equality. Instead, it might rather be a symptom of the

[22] Katrin Elborgh-Woytek, Monique Newiak, Kalpana Kochhar, Stefania Fabrizio, Kangni Kpodar, Philippe Wingender, Benedict J. Clements, and Gerd Schwartz, *Women, Work, and the Economy: Macroeconomic Gains from Gender Equity* (New York: International Monetary Fund, 2013), p. 4.

[23] Elborgh-Woytek et al., *Women, Work, and the Economy*, p. 9.

greater undergirding inequality in these countries with regard to poorer education opportunities for females.

The *Global Gender Gap Report* also reveals that, despite the political empowerment scores' increase over the past five years, economic participation and opportunity for women have decreased. For example, while Algeria recorded one of its highest scores in political empowerment in 2013, its economic participation and opportunity for women plummeted to an all-time low. A similar paradoxical development occurred in Morocco in 2008, Tunisia in 2011, and Pakistan in 2012. In contrast, countries such as France, India, and the United States have recorded upward trends since 2006 for both indicators. Access to property and land is granted to both women and men in all countries represented in Figure 1.2; however, women's access could be restricted if inheritance, divorce, or marriage laws interfere, as discussed later in this chapter. For example, in Egypt, if a couple divorces, the woman has no stake in any of the couple's marital assets, and has no right to retain ownership interest in the marital home or any other property. Moreover, especially in rural areas, it is not socially acceptable for women to inherit land. Generally, women's land ownership is low across these countries, with 7 percent in Morocco and 5 percent in Egypt. Recent policy initiatives to reinvigorate rural development as a driver for economic growth in Algeria and Morocco have been gender blind and do not specifically target or support rural women. In sum, although legal reforms have become more conducive to women's activity in the economy, discriminatory practices, traditional norms, and social values prevail in particular in rural areas.

Similarly, access to credit and loans is available to women and men without legal restrictions in the selected countries in Figure 1.2. However, women often lack capital, financial literacy, or face discriminatory conditions in obtaining loans. For example, in Algeria women are legally permitted to access commercial loans, but they often do not apply because they cannot secure credit. The OECD social institution and gender index reports that, in Morocco and Egypt, financial access has been limited because of unequal conditions. Furthermore, a report of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) notes that banks discriminate against women and are reluctant to allow them to take out loans.[24] Thus, women tend to find easier access to loans through credit societies than through banks.

Therefore, it seems that the promotion of women's rights by authoritarian regimes, although significant, was reined in by patriarchal considerations as well as legal restrictions stemming from gender-based differentiations of family and civil law. State actors posited themselves as champions of

[24] "Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Egypt," *United Nations CEDAW/C/EGY/4-5*, March 30, 2000, <http://www.un.org/womenwatch/daw/cedaw/cedaw24/cedawcegy45.pdf>.

individual rights to women as long as the latter did not threaten the stability of the family and, therefore, the nation. In doing so, the women's rights category was fragmented into different sets of rights that I call individual rights (education, work, and politics) and rights of the self (sexuality and family). The latter are most at odds with Islamic norms and values, although they are still subject to continuous interpretations by fundamentalist groups.

Additionally, the state's patronization of women's rights went hand in hand with the disciplinization of Islam and its reform. By founding civil law on Islamic prescriptions, the state has contributed to the redefinition of Islamic law and its interpretations. Therefore, it has impacted the theological and political debates on women's rights. The work of Mounira M. Charrad, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco*, Deniz Kandiyoti's *Women, Islam and the State*, and Suad Joseph's *Gender and Citizenship in the Middle East*, have explored the relationship between Islam, the nature of state projects, the position of women in the modern nation-states, and, finally, kin-based communities' impact on women. They all show that the variation of women's rights between countries is explained by the institutional and political landscapes in which the advancement of women's rights is debated. We would like to go one step further and argue that these political and institutional landscapes have also impacted the nature and content of religious debates on women's rights and other sensitive questions concerning blasphemy, human rights, or tolerance.[25]

NATION-STATES AND SHARIʿA: OR HOW SHARIʿA BECAME ISLAMIC LAW

Family law—also called personal status law—determines many aspects of a woman's life, including her right to inherit, work, marry, divorce, and retain custody of her children. Western nations have reformed many of these laws since women's rights movements expanded at the end of the nineteenth and start of the twentieth century. In *State, Power, Religion, and Women's Rights: A Comparative Analysis of Family Law*, Mala Htun and S. Laurel Weldon discuss the implications of family laws for the lives of women worldwide and how countries rank in their family law's treatment of women. Overall, Muslim countries follow the general trend of nations that have reformed their laws to promote the equality and rights of women. Interestingly, at the time of independence, Muslim-majority countries enshrined Shariʿa in their legal

[25] Jocelyne Cesari, *The Awakening of Muslim Democracy: Religion, Modernity, and the State* (Cambridge: Cambridge University Press, 2014).

systems by redefining and reducing it mostly to family law, inspired by traditional jurisprudence (or *fiqh*).[26]

Htun and Weldon conducted their survey in seventy countries at four points in time: 1975, 1985, 1995, and 2005. The survey considers the multiple ways a country's laws can promote or prejudice a woman's autonomy or dignity. These include: minimum marriage age, her consent to marriage, marriage ban between certain religious or cultural groups, spousal rights and duties, guardianship, marital name requirement, marital property regime, divorce, custody of children, adultery, property after divorce, and inheritance and right to work.[27] The countries with the lowest scores were Egypt and Saudi Arabia. The version of Shari'a law upheld in many nations is problematic as it requires women to obey their husbands, allows for polygamy, states that divorce via the husband's repudiation of his wife is legal, sees the father as the legal guardian of children even after divorce, and ensures husbands administer common property during and after their marriage. Many of the countries with low indexes, such as Egypt or Pakistan, have sought to change these family laws over the years to make them more supportive of women's rights. However, many of these changes required a huge effort or were later reversed, as happened as a result of the 1979 Iranian Revolution, which overturned the liberation of family law that had occurred during the secular rule of the Shah.

After independence in 1947, the national government in Pakistan instituted a decade-long process of reforming family law, leading to the 1961 Muslim Family Law Ordinance (MFLO). The MFLO created the "Nikah Registrar," with the aim of having a neutral third party that could provide unbiased evidence in cases of marriage and divorce. It abolished unmitigated polygamy by making consent of the current wife mandatory for a second marriage. It also put in place procedures for regulating divorce by stating that a man has to submit an official notice to the chairman of the court and a copy to his wife once he pronounces a *talaq* divorce. Prior to this, a husband could unilaterally divorce his wife by three verbal pronouncements of "*talaq*," even in the absence of witnesses. According to the same law, a wife has the right to "claim and obtain" maintenance if the husband fails to do so, by referring her case to the chairman of the Union Council (local government office). The MFLO increased the legal age of marriage, 18 for males and 16 for females, and put into effect penal sanctions for contracting underage unions. Additionally,

[26] Mala Htun and S. Laurel Weldon, "Religious Power, the State, Women's Rights, and Family Law," *Conference Paper*, November 2014, <https://columbiacpseminar.files.wordpress.com/2015/01/htun-weldon-fam-law-pg-nov-2014.pdf>.

[27] The study gives one point for each of the aforementioned categories that benefit women and zero points for each that prejudices against women. Countries with lower scores have more laws that prejudice women.

it established that if a girl's guardian married her off underage, she could repudiate the marriage once she turned 16.

The strides of progress toward women's rights were halted after Zia ul Haq assumed power in 1977 in a military coup, overthrowing the government of Zulfiqar Ali Bhutto. Under Zia's rule, Pakistan underwent a rapid Islamization, especially in criminal and civil law. The Hudood Ordinances, which criminalized adultery and other sexual offenses and restored Islamic punishments such as flogging, were the most detrimental to women's rights. The discrimination of women expanded further into jurisprudence as the legal testimony of women was ruled to have half the weight of the testimony of men. More so, testimony by women was made inadmissible in cases of "Hudood" crimes. These ordinances increased the number of women in prison from 70 in 1980 to over 6,000 in 1988, the majority of them due to accusations of adultery.[28] Human rights organizations heavily criticized the Hudood Ordinances for these discriminatory laws.[29] For example, a rape victim has to provide four male eyewitnesses to support her case or she might be charged with adultery. Over twenty years later, Pervez Musharraf's government urged the Council of Islamic Ideology to recommend amendments to the Hudood laws.[30] The result was the introduction of a Women's Protection Bill in 2006 that sought to amend the Hudood Ordinances by placing rape under the Pakistani penal code, which is based on secular principles instead of Shari'a law.

The reform of family law in Algeria has been one of the thorniest political issues since independence. In contrast to other countries in the region, such as Morocco and Tunisia, which rapidly codified family law, this did not happen in Algeria until 1984. No consensus could be reached on the state legislation on marriage, divorce, and polygamy, due to the antagonistic positions of reformists (although still within the parameters of the traditional *fiqh*) and Islamists. When Islamists started to gain social and political influence, the government took on some of their demands and issued a family law in which family was legalized as an agnatic kinship structure in which the patrilineal male line has absolute power. The husband can marry up to four wives as long as he simply informs his first, second, or third wife, even if she/they does/do not consent to the decision. In other words, Algerian law on polygamy is more regressive than in other countries where polygamy is allowed; for example, in Pakistan the first wife has to consent to her husband marrying another wife.

[28] Amina Jamal, *Jamaat-e-Islami Women in Pakistan: Vanguard of a New Modernity?* (New York: Syracuse University Press, 2013), pp. 107–8.

[29] "Pakistan: Reform Hudood Laws Now: Government Must Honor Pledge to Table Women's Protection Bill," *Human Rights Watch*, November 14, 2006, <https://www.hrw.org/news/2006/11/14/pakistan-reform-hudood-laws-now>.

[30] Anita M. Weiss, "Moving Forward with the Legal Empowerment of Women in Pakistan," *United States Institute of Peace Special Report*, May 2012, <http://www.usip.org/sites/default/files/SR305.pdf>.

Furthermore, the Algerian code establishes that women can be thrown out of the house without any financial support as a result of repudiation. They can, however, request a divorce under certain circumstances, such as sexual infidelity or the husband's prolonged absence from home (which are already acknowledged in classical Islamic jurisprudence). In 2005, some reforms were introduced which render a marriage valid only when both spouses have given their free consent.[31]

In contrast to Algeria and Pakistan, Turkey was more progressive in its attempt to promote women's rights through the reform of family law. As part of his vision of a modern and secular nation, Atatürk initiated new laws to promote women's equality. In other words, empowering women was a vehicle to build the secular polity, although it was neither democratic nor liberal.[32] The decrees of the 1926 Turkish civil code included the abrogation of polygamy, equal entitlement to divorce rights, and education for women and girls.[33] These laws borrowed from the Swiss civil code, but, at the same time, were crafted so as to not drastically interfere with the patriarchal family structure. A woman's right to work outside the home was thus still contingent on her husband's permission.

In the case of Egypt, the debate on women's rights is spearheaded by the conflict between the state law, which tends to legitimize some religious interpretation detrimental to women's rights, and women's groups' activism. For example, in 1926, the Egyptian cabinet approved controversial proposals to restrict polygamy, which were not supported by King Fuad. Similarly, in 1943 and 1945, the attempts of the Ministry of Social Affairs to prohibit men from taking a second wife were thwarted due to strong religious opposition.[34] This unsuccessful attempt led women's groups to realize that reform had to be initiated by women themselves and that any change to the law had to be rooted in Shari'a and Islamic traditions. For these reasons, women created hermeneutic communities that challenged official interpretations of religious texts and laws. They offered their own female-friendly readings of law, with the goal

[31] However, ambiguities persist because the new law requires the consent of a woman's guardian before she can marry, thereby restricting her degree of freedom of marriage. "Country Profile: Algeria," *OECD Social Institutions and Gender Index*, July 9, 2015, <http://genderindex.org/country/algeria>.

[32] Yesim Arat, "Women's Movement of the 1980s in Turkey: Radical Outcome of Liberal Kemalism?" in *Reconstructing Gender in the Middle East: Tradition, Identity, and Power*, ed. Fatma Müge Göçek and Shiva Balaghi (New York: Columbia University Press, 1994), pp. 100–12.

[33] Seval Yildirim, "Aftermath of a Revolution: A Case Study of Turkish Family Law," *Pace International Law Review* 17 (2005): 347–71.

[34] John L. Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law* (New York: Syracuse University Press, 2001), pp. 57–9; Hanan Kholoussy, "The Nationalization of Marriage in Monarchical Egypt," in *Re-Envisioning Egypt 1919–1952*, ed. Arthur Goldschmidt, Amy J. Johnson, and Barak A. Salmoni (Cairo: American University in Cairo Press, 2005), pp. 334–8.

of advancing their rights and reforming the legal system internally. These hermeneutic communities can lobby for judicial and legislative change and educate the public.

As in other Muslim countries, Egyptian family law is based on *traditional Islamic jurisprudence*, meaning that, prior to the 1985 and 2000 reforms, a husband could divorce his wife simply by saying "*talaq*" three times, could have a no-fault divorce, did not need to appear in court in order to divorce his wife, and could marry four wives. In contrast, a woman must prove (*darar*) injury in order to receive a divorce and it can take eight to ten years on average to attain a judicial divorce. As a consequence of altering religious interpretations to derive new legal statutes, women's rights in Egypt have been strengthened over the past three decades. In 2000, Law 10 stated that a woman can have a no-fault divorce if she gives up money from her husband. The 2014 constitution recognizes female-headed households and a duty for the Egyptian state to protect them.

The evolution of Egypt's legal code on the issue of maintenance law, from 1985 until its most recent reforms in 2012, exemplifies the dialectical relation between the more rigid state law and flexible rendition of religion, and how this can strengthen equality and rights of women. Under Egyptian law, a woman is eligible to receive a "maintenance" fund from her ex-husband or father similar to the MFLO in Pakistan in 1961, when women gained the right to "claim and obtain" maintenance. However, while maintenance is protected under Egyptian law, this fund comes with stipulations. Namely, in order for the woman to receive her maintenance fund, she must continue to obey the man who is giving her this fund.[35] In 2002, Article 20 of the amended Egyptian Personal Status Law allowed a woman, for the first time, to end her marriage under the condition that she returns all of the money her husband has given her. In 2004, Law 10 introduced a new court system to facilitate fair judgment for wives by creating a panel of three judges assisted with two social and psychology experts (one of whom has to be a woman). In 2004, Law 154 allowed Egyptian women who have children by a foreign man to transfer Egyptian citizenship to their children. In 2005, Law 4 gave divorced women the right to maintain custody over their children until they reach the age of 15. Proposed amendments to personal status laws in Egypt in 2009 raised fervent public debate because they contained restrictions on polygamy and required the husband to provide a home for the wife who does not have children, or who was divorced by a unilateral decision from the husband in cases where the marriage lasted for over fifteen years. These amendments never reached the floor of the Egyptian assembly before its dissolution in early 2011.

[35] This is the product of the traditional Islamic view of marriage as being a contract between a man who provides financially and a woman who pledges her obedience to him in return.

The achievements of women's groups in Egypt on issues of reforming maintenance laws do not necessarily represent a generalizable trend toward more progressive rights for women in Muslim countries, as attested by the regressive evolution of women's status in Pakistan or Iraq. Until the fall of Saddam Hussein in 2003, the civil law in Iraq, although loosely inspired by Islamic jurisprudence, prohibited polygamy and established the age for legal marriage at 18. In 2014, the parliament introduced a new personal status law (which has not been adopted) based on the traditional Shari'a law, or Ja'fari code, with the intention of setting the marriage age for girls at 9 and permitting unconditional polygamy.

Women's reproductive rights is another contentious topic falling within the jurisdiction of family law. It is interpreted differently across countries, as a result of competition between state actors, religious figures, and women's groups. According to Pew research,[36] abortion is illegal in Egypt and Algeria, except if it is done to save a woman's life and is considered "necessary." In Turkey, abortion is legal if done within the first ten weeks. Furthermore, contraception has been encouraged in Egypt in the past decades in order to control the rapid population growth. Under President Mubarak, contraceptive use doubled from 24 percent in 1980 to 50 percent in 2000.

In summary, when reflecting on the evolution of family law in the highlighted countries since independence, it becomes apparent that secular national rulers—influenced and sometimes limited by kinship and rural groups—built a hybrid family law, combining traditional religious views of family with some concerns for gender equality. In this regard, the state capacity to reform traditional family law depends on the political importance of kinship and communal divisions, which are specific to each country. That is why women in Egypt or Algeria do not have equal access to divorce as men, while they do in Turkey, Tunisia, Indonesia, or Morocco.

The state has emerged as the major agent to redefine Islam and grant rights to women. This creates, at the same time, a bifurcation between political, economic, and social rights on one hand, and reproductive and sexual rights on the other hand. The Islamic dimension was not an obstacle to the advancement of the former, but it does affect the latter—especially concerning civil law that emerged as a hybrid between secular (inherited from the colonial powers) and Islamic provisions. For this reason, the state legislation on family law has been central on the agenda of Islamist movements and their claim to an Islamic state.

[36] "Abortion Laws around the World," *Pew Research Center Religion & Public Life*, September 30, 2008, <http://www.pewforum.org/2008/09/30/abortion-laws-around-the-world/#middleeast>.

Reading Islamists' Positions within the State Policy Framework

In Egypt, ever since their inception, the Muslim Brothers have harbored a traditional view of women's rights concerning education, the right to work, and the right to vote. This traditional view was expressed by Al-Azhar University, which released a Bill of Rights for Women in 2013 that reasserts the consensus of Sunni tradition on the status of women in the family vis-à-vis education, work, personal security, and political participation.[37] Women and men subsequently experience equality in spiritual and religious matters, as well as in education, work, and political activities. At the same time, however, the man has authority over a woman's right to divorce and educate children in Islam.[38]

In the same vein, the electoral platform of the Freedom and Justice Party (FJP) in 2011 reasserted the traditional views of the Muslim Brothers by declaring "full freedom for the Egyptian people is a profound principle and a fundamental right."[39] It prefaces that with a statement that ensuring women's access to all their rights shall be consistent with the values of Islamic law, while maintaining the balance between their duties and rights. Overall, the FJP program contained ambiguous formulations such as "We stress the importance of social support to women to help them perform their roles in society" and "We support their demands for fundamental free and dignified life fit for their human and social status."[40] Moreover, most significantly, the following assertion, "All citizens enjoy equal rights and duties guaranteed by law in accordance with the principles of equality and equal opportunities without discrimination of religion or race,"[41] omits the protection of gender-based discrimination.

Interestingly, in the 2012 constitution adopted by Mohammed Morsi's Islamist regime, the clause from the 1971 constitution recognizing equality between women and men as long as it does not "violate the rules of Islamic jurisprudence," was removed.[42] However, similar to the FJP elections program, the 2012 constitution no longer included the provision that discrimination based on gender is prohibited. Furthermore, Article 10 affirmed

[37] Reem Leila, "Equal Opportunity," *Al-Ahram Weekly*, June 20, 2013, <http://weekly.ahram.org.eg/News/3054/17/Equal-opportunity.aspx>. "Al-Azhar under Pressure Not to Issue Women's Rights Document," *Egypt Independent*, April 22, 2013, <http://www.egyptindependent.com/news/al-azhar-under-pressure-not-issue-women-s-rights-document>.

[38] "Al Azhar Issues a Bill of Rights for Women," *Islamopedia online*, June 17, 2013, <http://www.islamopediaonline.org/news/al-azhar-issues-bill-rights-women>.

[39] "Election Program," *Freedom and Justice Party*, July 9, 2015, <http://kurzman.unc.edu/files/2011/06/FJP_2011_English.pdf>.

[40] "Election Program," *Freedom and Justice Party*.

[41] "Election Program," *Freedom and Justice Party*.

[42] "Egypt: New Constitution Mixed on Support of Rights," *Human Rights Watch*, November 22, 2012, <https://www.hrw.org/news/2012/11/30/egypt-new-constitution-mixed-support-rights>.

Islamists' views on the traditional family by asserting the state's role to "guarantee harmony between women's duties to family and to work."[43] After the military coup that ended Morsi's regime, the new constitution asserted "The State shall ensure the achievement of equality between women and men in all civil, political, economic, social and cultural rights" and that "All citizens are equal before the Law. They are equal in rights, freedoms, and general duties, without discrimination on religion, belief, sex, origin, race, color, language, disability, social class, political, or geographical affiliation or any other reason."[44]

Differences between Islamists and Salafis have emerged, specifically on the issues of women's rights and freedoms of expression. For Salafis, restrictions on women's rights are much more far-reaching. They follow the Wahhabi interpretation (as implemented in Saudi Arabia) and therefore advocate for restrictions of women's rights in the workplace, social life, and the political sphere. The Muslim Brotherhood bars women from running for presidential office, whereas Salafi groups go much further in restricting women's roles. For example, the al-Nour Party, one of the most prominent Salafi political parties, bars women from presidential office in addition to limiting the role of women in the economy, the public sphere, and at home. The al-Nour Party was the most vocal opponent of references to gender equality during the preparation of the 2012 constitution.[45]

While Salafi groups historically opposed democracy altogether, they changed their position to capitalize on the political opportunities emerging after 2011. This engendered some compromise on the political rights of women as well. For example, during the 2011 electoral campaign, the al-Nour Party included several female candidates on its list of nominees, causing uproar within the different Salafi groups.

In Tunisia, the Ennahda Movement has spelled out the exact progress it hopes to achieve with respect to improving women's status in society. More concretely, Ghannouchi, the leader of Ennahda, has publicly asserted the compatibility of women's rights and Islam and has called for women to play a strong public role in society. This includes categories such as legal rights, education, the right to work, civil and political rights, personal status in the family, equality of salaries, and political participation. Ennahda, however, does not stand unopposed. Similar to Egypt, Salafi groups have increased their

[43] Mai El-Sadany, "Highlights from Egypt's Draft Constitution (Part 2)," *Atlantic Council*, December 3, 2013, <http://www.atlanticcouncil.org/blogs/menasource/highlights-from-egypt-s-draft-constitution-part-2>.

[44] "Constitution of the Arab Republic of Egypt," *Unofficial Translation*, 2014, <http://www.sis.gov.eg/Newvr/Dustor-en001.pdf>, pp. 7, 17.

[45] "Nour Party Opposes Gender Equality in Egypt Constitution," *ahramonline*, November 5, 2013, <English.ahram.org.eg/NewsContent/1/64/85660/Egypt/Politics-/Nour-Party-opposes-gender-equality-in-Egypt-consti.aspx>.

social influence since 2011. For example, the Moderate Association for Awareness and Reform Party has held a large public demonstration to call for the implementation of Shari'a law.

In the case of Pakistan, the demarcation between Salafis and Muslim Brothers is not as clear as in Egypt or Tunisia. Most significantly, state policies endorsed the Salafi conception of women's rights early on. For example, the Jamaat-i-Islami (JI) Party—founded by Maulana Abul Ala Maududi in 1941—was a strong supporter of General Zia Al Haq's Islamic policies between 1977 and 1988. At this time, JI party members gained positions in the bureaucracy, judiciary, and public universities, and actively promoted the Hudood Ordinances. They also strongly opposed the Women's Protection Bill of 2006. The ultra-conservative six-party alliance Muttahida Majlis-e-Amal (MMA),[46] which includes the JI Party, called the Women's Protection Bill "un-Islamic" and unconstitutional, referring to Article 227, which states, "No laws will be passed which are repugnant to the Qur'an and Sunnah."[47] During MMA's five-year rule, from 2002 to 2007, it politically and ideologically supported the Taliban, allowing them, for example, to consolidate their power in the Swat region.[48] The Taliban's radical views on women's rights have led to spectacular attacks, like the shooting of Malala Yousafzai in a school bus in 2012 because she was campaigning for girls' right to education.

In Turkey, the polarization of secularists versus Islamists and, in its wake, the contrasted interpretation of women's rights, took another turn with the rise of Islamic parties, who entered the public and political debates in Turkey in the late 1980s. The Refah (Welfare) Party, in particular, started to develop a counter discourse to the modernity advanced by the Kemalists.[49] Necmettin Erbakan—the leader of the Refah Party, who had close ties with Egypt's Muslim Brotherhood—supported a traditional role of women vis-à-vis their public and private life.[50] Despite recognizing the party's strong women's grassroots network, Erbakan attempted to close shelters used for female victims of sexual violence, propagated the view that the primary role of

[46] The MMA alliance was born out of circumstance and convenience, with its members divided along ideological lines, for example, between the Jamiat Ulema-e-Pakistan (JUP) and the JI. Yet the MMA gained political power in the 2002 elections, most notably in the North West Frontier Province (NWFP) and Balochistan. Later, tensions in the MMA increased over the support for Musharraf to continue as president and the decision whether to contest the 2008 elections. Eventually, the alliance collapsed in 2008.

[47] Syed Shoaib Hasan, "Strong Feelings over Pakistan Rape Laws," *BBC News*, November 15, 2006, <http://news.bbc.co.uk/1/hi/world/south_asia/6152520.stm>.

[48] Magnus Norell, "The Taliban and the Muttahida Majlis-e-Amal (MMA)," *China and Eurasia Forum Quarterly* 5/3 (2007): 61–82; Abubakar Siddique, *The Pashtun Question: The Unresolved Key to the Future of Pakistan and Afghanistan* (London: Hurst, 2014), pp. 119–20.

[49] Çınar, Alev. "Subversion and Subjugation in the Public Sphere: Secularism and the Islamic Headscarf," *Signs* 33/4 (2008): 891–913.

[50] Taşpınar, Ömer. "Turkey: The New Model?" *Brookings Institution*, April 2012, <http://www.brookings.edu/research/papers/2012/04/24-turkey-new-model-taspinar>.

women was being a housewife and mother, and promoted the limitation of women's economic participation to only four hours on two days a week.[51] Erbakan was a steadfast supporter of women wearing headscarves in public.[52] The ban of the headscarf in 1986 made it a symbol of the divide between secular and Islamic forces in Turkey. Underlying the prohibition of the headscarf was the neutrality principle of public service, modeled on the French understanding and initially inscribed in the Kemalist policies of the 1920s and 1930s.[53]

The Justice and Development Party (AKP) under Recep Tayyip Erdoğan tried to set itself apart from its predecessors by scaling down its religious references. For example, the AKP was less outspoken on traditional Islamic issues, such as the headscarf debate, in the 2002 elections and openly supported the European Union (EU) accession process. Erdoğan crafted a label for his party, calling it "conservative democratic," which intentionally departed from the Islamic references used before, yet upheld its Islamic roots.[54] After the AKP's victory in the 2002 elections, the government significantly reformed its civil code to strengthen women's rights. For example, as part of this reform the husband's permission to work was repealed and sexism in the work place was declared illegal. This can be partly attributed to the increasing pressure from the EU to improve women's status as Turkey moved closer to EU accession.[55] Further amendments in 2004 criminalized sexual harassment and introduced life imprisonment for so-called "honor killings."[56] At the same time, however, Erdoğan attempted to criminalize adultery in 2004. In his campaign for the anti-adultery bill, Erdoğan maintained "Outlawing marital infidelity is a vital step towards preserving the family and human honor."[57] However, widespread protest in Turkish civil society and pressure from the EU led to proponents of the bill abandoning any further discussion on it.[58]

[51] Zehra F. Kabasakal Arat, "Institutions and Women's Rights: Religion, the State, and Family in Turkey," in *Family, Gender, and Law in a Globalizing Middle East and South Asia*, ed. Kenneth M. Cuno and Manisha Desai (New York: Syracuse University Press, 2009), p. 294.

[52] Stephen Kinzer, "Necmettin Erbakan, a Turkish Prime Minister, Dies at 84," *New York Times*, February 28, 2011, <http://www.nytimes.com/2011/03/01/world/europe/01erbakan.html>.

[53] Under Atatürk's People's Republican Party there was no legal restriction on women's dress, because Atatürk believed that this did not endanger the modernization project.

[54] Ayşe Gunes Ayata and Fatma Tütüncü, "Party Politics of the AKP (2002–2007) and the Predicaments of Women at the Intersection of the Westernist, Islamist and Feminist Discourses in Turkey 1," *British Journal of Middle Eastern Studies* 35/3 (2008): 363–84.

[55] Arat, "Institutions and Women's Rights," p. 98.

[56] "Country Profile: Turkey," *OECD Social Institutions and Gender Index*, July 9, 2015, <http://genderindex.org/sites/default/files/datasheets/TR.pdf>.

[57] Smith, Helena. "Turkey Split by Plan to Criminalise Adultery," *The Guardian*, September 5, 2004, <http://www.theguardian.com/world/2004/sep/06/turkey.helenasmith>.

[58] Susan Sachs, "Adultery a Crime? The Turks Think Again and Say No," *New York Times*, September 15, 2004, <http://www.nytimes.com/2004/09/15/international/europe/15turkey.html>; Gül Aldikaçti Marshall, *Shaping Gender Policy in Turkey: Grassroots Women Activists, the European Union, and the Turkish State* (Albany, NY: SUNY Press, 2013), pp. 109–15.

With EU accession moving further out of reach, and a landslide victory of the AKP in the 2008 elections, Erdoğan gained momentum to take on the controversial topic of women's headscarves in public institutions. In 2010, the AKP overrode the constitutional court's ban on the headscarf, allowing Muslim women who chose to veil to attend university. A Gallup Poll in 2008 reveals underlying complexities in Turkish society: while 73 percent of Turks say that religion is an important part of their daily lives, only 7 percent say that Shari'a must be the only source of legislation.[59] In contrast, over 60 percent of Egyptians believe that Shari'a should be the only legislative source. This intricacy of religion's role in Turkish public space is epitomized by the headscarf debate. The Gallup Poll further showed that almost 50 percent of women who wear a headscarf in public believe it is a religious obligation, whereas 60 percent of women who chose not to veil in public say they believe it is *not* a religious obligation.[60]

The AKP has increasingly utilized women's reproductive rights as a topic to appease Islamic conservatives and to set the agenda for national debates, as seen since the general elections of 2015.[61] For example, in 2014, Erdoğan declared at an international summit on women and justice: "What is right is to establish equality among women. What is right is to have equality among men. You cannot put women into men's work like the communist regimes did in the past. […] That would go against women's delicate bodies." He further asserted, "Our religion [Islam] has defined a position for women: motherhood."[62] In a similar vein, Erdoğan spoke out in 2013 about the lack of sex-segregated dorms at universities. He promised to take action, saying "All kinds of messy things are happening. Parents are crying out, 'Where is the state?' We have to show where the state is."[63] A year before that, in 2012, Turkey was caught in a heated debate on an abortion law planned under AKP's government. Erdoğan described abortion as tantamount to murder, asserting

[59] Magali Rheault, "Headscarves and Secularism: Voices from Turkish Women," *Gallup Poll*, January 8, 2008, <http://www.gallup.com/poll/104257/headscarves-secularism-voices-from-turkish-women.aspx>.

[60] Rheault, "Headscarves and Secularism."

[61] In these general elections, the AKP lost the majority of seats in the parliament, which has led to a coalition with more secular and feminist political groups.

[62] Tulin Daloglu, "Erdoğan Rejects Women's Equality," *Al Monitor*, December 1, 2014, <http://www.al-monitor.com/pulse/originals/2014/12/erdogan-women-men-not-equal-turkey.html>; "Recep Tayyip Erdoğan: 'women not equal to men'," *The Guardian*, November 24, 2014, <http://www.theguardian.com/world/2014/nov/24/turkeys-president-recep-tayyip-erdogan-women-not-equal-men>.

[63] Orhan Kemal Cengiz, "Erdoğan's 'Morality Police' Assumes Duty," *Al Monitor*, November 6, 2013, <http://www.al-monitor.com/pulse/originals/2013/11/turkey-morality-police-erdogan.html>.

abortion "has no place in our values."[64] Although abortion remains legal in the first ten weeks of pregnancy in Turkey, reports revealed that state hospitals no longer perform the procedure, because funds for abortion were cut.[65]

Compared to other Muslim-majority countries like Egypt, Pakistan, or Algeria, Turkey has one of the most progressive legal codes regarding women's rights. However, public culture remains strongly patriarchal. For example, the rates of violence against women, especially intimate partner violence, have surged in the past decade. A failure to adequately abide by the statutes of the Turkish protection law reveals not just a missing level of expertise among jurists and the police, but a societal neglect of the importance of women's protection. Human rights organizations report that 42 percent of women aged 15 to 60 have experienced physical or sexual violence by their husbands or partners at some point in their lives.[66] This equals 11 million women, of whom only 3 percent told a police officer, public persecutor, or neighborhood official.[67] The reluctance of women to seek support against an abusive partner reflects the strong patriarchal nature of Turkish society.

In the same vein, an unexpected consequence of the Arab Awakening has been the surge of violence against women.[68] In Tunisia, according to a survey carried out by the National Board for Family and Population (ONFP) published in 2012, about one in two women said they had been subjected to violence during their life, 47.1 percent in urban areas and 48.7 percent in rural areas. The study shows that the main perpetrators of such violence are spouses, who are responsible for 47.2 percent of the physical violence cases, 68.5 percent of the psychological violence cases, 78.2 percent of the sexual violence cases, and 77.9 percent of the economic violence cases.

[64] Sebnem Arsu, "Premier of Turkey Seeks Limits on Abortions," *New York Times*, May 29, 2012, <http://www.nytimes.com/2012/05/30/world/europe/turkish-premier-calls-for-more-abortion-restrictions.html?_r=0>; "Turkish Abortion Debate: The Council of Europe Criticizes the Proposed Ban on Abortion," *CHP EU Representation*, June 7, 2012, <http://chpbrussels.org/2012/06/07/turkish-abortion-debate-the-council-of-europe-criticizes-the-proposed-ban-on-abortion/>.

[65] Pinar Tremblay, "Turkish Laws Fail to Protect Women's Right to Choose," *Al Monitor*, March 14, 2014, <http://www.al-monitor.com/pulse/originals/2014/03/turkish-womens-right-to-choose-law-fails.html#>.

[66] "He Loves You, He Beats You: Family Violence in Turkey and Access to Protection," *Human Rights Watch*, 2011, <http://www.hrw.org/sites/default/files/reports/turkey0511webwcover.pdf>.

[67] "He Loves You, He Beats You."

[68] "Deeply Disturbed by Reports of Sexual Violence in Tahrir Square," *Tahrir Institute of Middle East Policy*, September 6, 2014, <http://timep.org/press-releases/timep-deeply-disturbed-reports-sexual-violence-tahrir-square/>.

CONCLUSION: ISLAM AS A CODE OF PUBLIC MORALITY

With the nationalization of Islam, the state became a central—if not the most important—agent redefining Islamic law and religious orthodoxy, leading to a reshaping of Islamic norms.

Consequentially, a combination of culturally constructed values (*adab*) and Islamic law create social customs, which emphasize the social over the individual being. In other words, daily interactions reinforce the idea that the self is subdued to social obligations. This standard extends to the very definition of equality. Whereas in the West equality is defined by uniform sets of individual rights, in the countries studied, equality is the equal obligation of individuals to promote communal welfare. Hence, the moral obligation of the family allows no room for the "promotion of self" above the interests of the community. Any conceptions of female emancipation, therefore, are regarded as dissonant with the cultural values of the nation often defined in religious terms. A case in point is the controversy created by Prime Minister Erdoğan in May 2012, when he told a gathering of the women's branches of his AKP that "each abortion is one Uludere"—a reference to air strikes on a village on the Iraqi border that killed thirty-four civilians in December. Abortions, said the PM, were "a sneaky plan to wipe the country off the world stage."[69] The same rhetoric is also present in Western democracies, as shown by the political agenda of Christian fundamentalist groups in the United States. These claims, however, do not operate (until now) within the same legal and political environment.

Generally speaking, gendered roles in the family reflect a hierarchy of social positions and purposes that directly impact on women's lives in both the private and public spheres. For example, at the core of the nationalist ideology of the countries surveyed, there is an element of self-preservation, in order to secure moral capital in a rapidly westernizing world. Globalization and consumerism both pose threats to the social composition of these respective regions of the Muslim world, which, in their instability, regard this trend as one of moral depravity. In this globalizing cultural setting, in which the terms and values of social relations are mutating, the reflex in most Muslim countries is to subordinate the rights of individuals, frequently women, in favor of general social cohesion and political welfare. Government officials, therefore, have relied upon the pre-established moral capital of religion and familial structure to control the social upheaval stirred by Western influences. Consequentially, women's behavior and sexuality often becomes restricted.

[69] Abortions are currently legal in Turkey. Justin Vela, "'Abortions are Like Air Strikes on Civilians': Turkish PM Recep Tayyip Erdogan's Rant Sparks Women's Rage," *The Independent*, May 29, 2012.

At the same time, religious norms and references cannot be completely controlled by the state, especially at a time of facilitated global communication and expedited circulation of ideas that increase the debate on Islamic orthodoxy. In other words, state policies are increasingly challenged by transnational ideas and agents which influence the national contexts of Islamic religiosity.

In this context, it is important to keep in mind that religious debates on women's rights in Muslim-majority countries take place within this state framework. It is therefore misleading to evaluate the current religious discourse based on the premodern status of the Islamic tradition, since the current clerical positions are not derived from this past but are grounded in the state's legal provisions and readjustment to orthodoxy and interpretation. In this regard, the state action has fixed the religious debate by imposing law as an instrument of orthodoxy. It reduces the religious debate to a pro or contra discussion on the existing status quo, which is based on a hybrid that is secular and Islamic.

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2

Catholicism, Gender, Secularism, and Democracy

Comparative Reflections

José Casanova

This is not a detailed comparative historical study of the role of gender or secularism in processes of democratization in Catholic countries in the so-called Catholic "third wave" of democratization. It only aims to offer some comparative reflections on some distinctive patterns that distinguish the relatively successful processes of democratization in majoritarian Catholic countries from the still more uncertain and contested processes of democratization in Muslim countries which are the focus of this volume.[1] In particular, it offers an interpretation as to why issues of secularism and gender, which have become so contested and entangled in processes of democratization in Muslim countries, did not play a significant role in transitions from authoritarian to democratic regimes in Catholic contexts. When highly divisive and politically contested issues of "gender," such as the legalization of divorce, abortion, or same-sex marriage, emerged on the legislative agenda in most Catholic countries, democratic regimes had already been consolidated. Certainly, as in the United States and in many other advanced democracies, those divisive moral issues led to "culture wars" and to political polarization, which, in some contexts, revived old clerical/anti-clerical and religious/secular cleavages. But those political conflicts took place within broadly accepted constitutional and democratic rules of the game and those cleavages within civil and political society did not endanger the stability of democratic regimes nor present a serious threat of democratic breakdown.

The so-called "third wave" of democratization, which began in 1974/5 with democratic transitions in Greece, Portugal, and Spain, continued throughout

[1] Jocelyne Cesari, *The Awakening of Muslim Democracy: Religion, Modernity, and the State* (New York: Cambridge University Press, 2014).

Latin America and some Asian countries in the 1980s, spread throughout Eastern Europe after 1989, and culminated with South Africa's transition to democracy in 1994, has rightly been called a "Catholic" wave.[2] Roughly two thirds of the approximately thirty countries that underwent successful transitions to democracy since the mid-1970s were majoritarian Catholic countries. This in itself points to the fact that a majority of Catholic countries in the 1960s had authoritarian regimes, many of them initially supported by the Catholic Church, by various forms of "political Catholicism," or by Catholic militant groups. Not all authoritarian regimes in majoritarian Catholic countries were supported by the Catholic Church. Some, such as the Soviet-type regimes in Eastern Europe, espoused radical forms of secularism and were openly anti-Catholic. What distinguished the third wave of democratization from previous waves, however, was the fact that, for the first time in history, the Catholic Church, Catholic movements, and lay as well as religious Catholic elites played consistently proactive and positive roles in processes of democratization in most Catholic countries. It was, moreover, the first time historically that Catholicism itself had not been the source of religious/secular cleavages of the kind that had often accompanied political transformations in Catholic countries since the mid-1800s. Although such cleavages reappeared later in various electoral contexts, at least at the time of the transitions they were significantly diminished.

In a sense, it is appropriate to call it a Catholic wave, not just because the countries in which it occurred happened to be Catholic, but because the transformation of Catholicism connected with the Vatican II *aggiornamento* was itself an important independent factor in producing the wave. Indeed, Catholic groups also played a prominent role, disproportionate to their size, in the democratic transitions of countries such as South Korea and South Africa, where Catholics comprised less than 10 percent of the population.[3]

As I have emphasized throughout my writings, the most important historical consequence of the Vatican *aggiornamento* was the transformation of the Catholic Church from a state-centered to a civil society-centered institution.[4] Two Vatican II Council documents, the Declaration on Religious Freedom, *Dignitatis Humanae*, and the Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, were particularly crucial in this transformation.

The recognition of the inalienable right of every individual to freedom of religion and freedom of conscience, based on the sacred dignity of the human

[2] Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991).

[3] José Casanova, "Civil Society and Religion: Retrospective Reflections on Catholicism and Prospective Reflections on Islam," *Social Research* 68/4 (2001): 1041–80.

[4] José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994).

person, means that the church abandons its compulsory character and becomes a "free church." Truth can no longer be imposed, nor is it permissible to coerce individual consciences to follow external dictates. The old saying "error has no rights" was abandoned. Not doctrines, but persons have rights. Beginning with Pope John XXIII's encyclical *Mater et Magistra* (1961), the church appropriated the modern discourse of human rights, leaving behind a long history of repeated categorical official condemnations of modern human rights principles that goes back to Pius VI's condemnation of the French National Assembly's Declaration of the Rights of Man in his Brief *Caritas* (1791). Pius IX's *Syllabus of Errors* (1864) reiterated most emphatically the condemnation of the principle of religious freedom as well as the separation of church and state.[5]

The immediate historical consequences of the declaration on religious freedom were: (a) the acceptance of the modern secular principle of disestablishment and separation of church and state; (b) the contestability of any Catholic party or political movement officially sponsored by the Catholic Church; and (c) in the long run the incompatibility of a dogmatic conception of authoritative tradition and the principle of freedom of conscience. In fact, a comparative analysis of transitions to democracy and of processes of constitution-making in Catholic countries during the third wave confirms not only the church's voluntary disestablishment from the state, but also its disengagement from political society proper.[6]

Only in Poland was disestablishment at first not fully voluntary. In 1991, Primate Cardinal Glemp presented an ambiguous public proposal to repeal the constitutional separation of church and state inherited from the communist regime on the dubiously democratic grounds that the rule of the Catholic majority would require the constitutional recognition of the religious confession of the majority of Polish citizens. But in the face of public resistance and, apparently and more significantly, the disapproval of the Vatican and of the Polish Pope, the church did not press the issue.[7] In fact, while every other branch of Christianity (Anglican, Presbyterian, Lutheran, Orthodox) still maintains some kind of formal establishment in some European country, the Catholic Church eschewed establishment in every (post-1974) transition to democracy in Southern Europe (Portugal, Spain) and in Eastern Europe (Poland, Hungary, Slovakia, Slovenia, Croatia).[8]

[5] José Casanova, "The Sacralization of the *Humanum*: A Theology for a Global Age," *International Journal of Politics, Culture, and Society* 13/1 (1999): 21–40.

[6] José Casanova, "Global Catholicism and the Politics of Civil Society," *Sociological Inquiry* 66/3 (1996): 356–73.

[7] Casanova, *Public Religions*, pp. 110–13.

[8] José Casanova, "The Problem of Religion and the Anxieties of European Democracy," in *Religion and Democracy in Contemporary Europe*, ed. Gabriel Motzkin and Yochi Fischer (London: Alliance Publishing Trust, 2008), pp. 63–74.

Indeed, the preamble to Poland's constitution shows how a majoritarian Catholic country was able to pragmatically solve the thorny question of any reference to God, to the Christian heritage, or to the secular values of the Enlightenment better than was the case with the rejected European constitution. The compromise wording suggested by ex-Prime Minister and Catholic intellectual Tadeusz Mazowiecki offers a non-laicist consensual solution to the constitution of a secular state:

> We the people of Poland . . . all the Polish citizens, both those who believe in God, who is the source of truth, justice, goodness and mercy, as well as those who do not share this faith and derive the values they recognize from other sources, equal in rights and obligations toward the common good . . . recognizing our responsibility before God or one's own conscience . . . pass this constitution.[9]

Respecting the dual principle of "no establishment" and "free exercise," as well as Alfred Stepan's "twin tolerations,"[10] Article 25 of the Polish constitution reads:

> 1. Churches and other religious organizations shall have equal rights.
>
> 2. Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life.
>
> 3. The relations between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere.[11]

In this sense, there has not emerged in any constitution-making process in Catholic countries an establishment clause controversy similar or equivalent to the official declaration of Shari'a as either *a* source or *the* source of legislation. The Catholic Church has accepted generally the secularity of the state and of state legislation, putting an end to long struggles over Catholic establishment and secular disestablishment since the French Revolution. This does not mean that the church accepts the principles of *laïcité* in the sense of "assertive" state secularism or restriction of religion to the private sphere. On the contrary, the relocation of the church from state to civil society and the adoption of the discourse of human rights together with the final acceptance of the legitimacy of the modern *saeculum*, as defined in the Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, is what grounds Catholicism as a modern *public* religion in civil society.

[9] Constitute, "Poland's Constitution of 1997," *Constituteproject.org*, April 18, 2016, <http://www.constituteproject.org/constitution/Poland_1997.pdf> (accessed October 10, 2016), p. 3.

[10] Alfred Stepan, "Religion, Democracy, and the 'Twin Tolerations,'" *Journal of Democracy* 11/4 (2000): 37–57.

[11] Constitute, "Poland's Constitution of 1997," p. 3.

In fact, the political engagement of the faithful, the religious as well as the laity, in the transformation of the world and action on behalf of peace, social justice, human rights, and liberation from any kind of oppression that undermines the dignity of the human person, will be defined from now on in the Council documents, in papal encyclicals, and in the pastoral letters of episcopal conferences throughout the world as a constitutive dimension of the People of God's divine mission.

As remarkable as the voluntary disestablishment from the state was the church's disengagement from political society proper. From a political science perspective, one of the most surprising outcomes of the third wave of democratization was that, despite the prominent role played by Catholic elites, groups, and social movements in so many transitions, and despite the influence and prestige the church gained thereby almost everywhere, not a single major Catholic party emerged out of any of the transitions of the third wave: not in Spain, not in Brazil, not in the Philippines, not in Poland.

Indeed, one can speak confidently of the end of the historical era of "political Catholicism," of the end of Catholic parties, and, in this sense, of the end of Christian democracy (though some Christian democratic parties may have survived with a much diminished Catholic identity in countries such as Germany or Chile), and of the collapse of Catholic Action, the main form of Catholic political mobilization throughout the twentieth century. The case of Spain is instructive. Political Catholicism never made the transition to Christian Democracy during the embattled politics of the Second Spanish Republic in the 1930s. In fact, among all forms of political Catholicism one finds throughout Europe and Latin America in the 1930s, only in Chile did a section of the Chilean Falange, led by Eduardo Frei and following the democratic principles of Jacques Maritain, make the transition from authoritarian "political Catholicism" to Christian Democracy before the Second World War. Some Catholic political movements in opposition to the Franco regime, particularly sections of the Catalan and Basque nationalist movements, adopted Christian Democracy after the war. But no major Christian Democratic party emerged out of the Spanish transition. Three separate Christian Democratic parties competed in the first general elections in 1977, but they failed to meet the minimum electoral threshold of 5 percent of the vote. Unable to gain parliamentary representation, none of the three parties survived the first post-Franco democratic elections. Apparently, Spain had missed the era of Christian Democracy. The Catholic parties of the 1930s were non-democratic and the democratic parties after the transition had become non-confessional.

At first, during the transition and immediately after, one could find politically engaged Catholics across the Spanish political spectrum from the extreme left to the extreme right. A genuine desire for religious peace after a protracted modern history of civil wars in which Catholicism itself had served as lightning rod; the realization that the Catholic community, the clergy

included, had become pluralistic politically and would not support any single Catholic party; the fear that any officially church-sponsored party could have become a minority party, thus undermining the church's claim that Catholicism was, at least sociologically, Spain's national religion—all these factors probably contributed to the church's choice to remain politically neutral during the transition. At the time, there seemed to be no major religious/ secular cleavage and no Catholic electorate susceptible to political mobilization by the church, even if the church had been interested in political mobilization.[12]

In the 1990s, deep religious/secular cleavages reemerged in Spanish politics, particularly around "education" and "gender" issues. The Catholic hierarchy now allied itself openly with the conservative Partido Popular (PP), while the Socialist Party adopted a much more assertive "secularist," that is, laicist, position. But the dramatic secularization of Spanish society and the consolidation of democracy meant that the religious/secular cleavages led to significant political polarization and to "culture wars." However, those took place within a constitutional democratic framework which never endangered the democratic regime itself. Indeed, public opinion polls reveal unmistakably that an overwhelming majority of the Spanish population support not only the secularization of politics, but also the secularization of sexual mores. In this respect, the attempt to turn moral confessionalism around gender issues into a new basis for political mobilization served to mobilize a conservative Catholic base which became associated with the PP, but it could not revive mass political Catholicism and the PP did not become a confessional Catholic party.

According to the most comprehensive recent survey of Spanish religiosity, the 2008 Bertelsmann's Religion Monitor, two thirds (67 percent) of Spaniards claim that their religious beliefs have practically no influence on their political opinions, while less than one fifth (18 percent) claim that they have significant influence.[13] Interestingly, while the survey reveals that there are significant gender and age differences on practically every aspect of Spanish religiosity, there are practically no gender and almost no age differences on this issue. Even among the self-defined highly religious, who constitute only 5 percent of the Spanish population, the proportion of those who claim that religion is important for their political opinions is almost the same (40 percent) as the proportion of those for whom their religious beliefs have no influence on their political opinions.

[12] Casanova, *Public Religions*, pp. 87–91.

[13] José Casanova, "Spanish Religiosity: An Interpretative Reading of the Religion Monitor Results for Spain," in *What the World Believes: Analyses and Commentary on the Religion Monitor 2008*, ed. Bertelsmann Stiftung (Gütersloh: Verlag Bertelsmann Stiftung, 2009), pp. 223–55.

Considering the almost obsessive emphasis that the official teachings of the Catholic hierarchy have recently placed on sexual and gender morality, even more striking is the clear separation, indeed the growing dissociation, between religion and sexual morality. Only 6 percent of Spaniards claim that religion is of great importance when it comes to sexuality, and only an additional 12 percent claim that religion has some influence on their sexuality. By contrast, a majority (51 percent) of Spaniards claim that religion has absolutely no influence upon their attitudes toward sexuality, while an additional 13 percent claim that it does not have very much influence. Thus, it would seem that Spanish sexual mores have become secularized and clearly differentiated from religious morality. It is significant that there is no gender gap on this issue, while there are still some differences between the three youngest cohorts and the two oldest ones on "gender" issues. Even among the self-defined highly religious, 26 percent claim that their religious beliefs have no influence upon their sexual attitudes, while only 41 percent claim that they wield significant influence. In fact, the figure is much lower than the proportion of religious people who claim that their religion influences their work and profession (58 percent) or their free time (53 percent).

Admittedly, since the 1970s, Spanish society has undergone a process of secularization more drastic perhaps than that of any other post-authoritarian Catholic society. Only Ireland has undergone a comparable process of drastic secularization in the wake not only of rapid economic modernization, but also as a consequence of the sexual abuse scandal.[14] Nevertheless, recent public opinion surveys show similar though less pronounced trends toward the separation of religion and politics, and most significantly toward the dissociation of religion and sexual morality in Latin American Catholic societies, such as Brazil or Mexico, which evince much less pronounced processes of secularization.[15]

Even in highly religious Catholic Poland, along with the "deconfessionalization" of the state, there has taken place a certain deconfessionalization of the nation with the recognition of internal ideological and cultural pluralism. Most significantly, there has been a pronounced liberalization and pluralization of moral norms in the public sphere, particularly with respect to sexual and gender norms as expressed in surveys of public opinion, in clear divergence from the official moral doctrines of the Catholic hierarchy (<http://cbos.pl/EN/home/home.php>).

[14] Malachi O'Doherty, *Empty Pulpits: Ireland's Retreat from Religion* (Dublin: Gill & Macmillan, 2008).

[15] Soledad Loaeza, "Cultural Change in Mexico at the Turn of the Century: The Secularization of Women's Identity and the Erosion of the Authority of the Catholic Church," in *Religious Pluralism, Democracy, and the Catholic Church in Latin America*, ed. Frances Hagopian (Notre Dame, IN: University of Notre Dame Press, 2009), pp. 96–130.

One can observe, indeed, a clear historical trend among Catholic democratic societies to pass legislation on family and gender issues, which goes against the publicly asserted official teachings of the church hierarchy, but is supported increasingly by public opinion and even by a majority of the self-defined Catholic population in those countries.[16] In discussing gender policies, however, as shown convincingly by Mala Htun in her study of state policies in the Southern Cone, it is important to disaggregate those policies since they tend to follow different dynamics.[17] Traditional family law influenced by Catholic teachings under the ancient regime, as well as modern civil laws influenced by the Napoleonic Code, had shared similar patriarchal principles of men's marital power (*puissance*), women's incapacity (*incapacité*), and *patria potestas*. It is important to recognize that changes in legal civil codes toward gender equality, which emerged at the beginning of the twentieth century and have been spreading globally since the 1960s, have not been opposed by the Catholic Church. On the contrary, with the adoption of the modern discourse of human rights in the 1960s, Catholic doctrine has supported full legal equality for men and women in the family as well as in society. As the chapters in this volume show, this is probably the most significant divergence between contemporary Catholic and Muslim societies.

In this respect, one may assert that divisive gender issues had not yet emerged publicly during the transitions to democracy in Catholic countries in the 1970s. Indeed, the incipient women's movements were part of the general coalition of civil society movements against the various authoritarian regimes and, as such, also fell under the general public protection of civil society by the church.[18] No religious/secular cleavages had emerged yet around gender issues.

Cleavages around "gender" issues only emerged after democracy had been consolidated, once socialist and leftist parties began to introduce legislation legalizing divorce and the use of contraceptives against the adamant opposition of the Catholic Church.[19] Despite its resistance, however, the Catholic Church has been unable to resist the general trend toward liberalization of divorce laws and the state's promotion of the use of contraceptives as part of reproductive health policies in most Catholic countries. In a sense,

[16] Mala Htun and Laurel Weldon, "State Power, Religion, and Women's Rights: A Comparative Analysis of Family Law," *Indiana Journal of Global Legal Studies* 18/1 (2011): 145–65.

[17] Mala Htun, *Sex and the State: Abortion, Divorce and the Family under Latin American Dictatorships and Democracies* (New York: Cambridge University Press, 2003).

[18] Sonia Alvarez, *Engendering Democracy in Brazil* (Princeton, NJ: Princeton University Press, 1990).

[19] Mala Htun, "Life, Liberty, and Family Values: Church and State in the Struggle over Latin America's Social Agenda," in *Religious Pluralism, Democracy, and the Catholic Church in Latin America*, ed. Frances Hagopian (Notre Dame, IN: Notre Dame University Press, 2009), pp. 335–64.

developments in Italy foreshadowed what was to emerge later throughout the Catholic world. Divorce was first introduced in Italy in 1970. The Vatican and Catholic organizations began to mobilize for a referendum to abrogate the divorce law, but the Catholic coalition was soundly defeated in the 1974 Italian referendum.

In Spain, the ban on the sale of contraceptives was lifted in 1978, the same year in which the democratic constitution was approved in a referendum. In 1981, a divorce law was passed by the Chamber of Deputies with the support of thirty representatives from the ruling Unión de Centro Democrático (UCD), who broke ranks with the conservative party leadership. This was a year before the electoral victory of the Spanish Socialist Party (PSOE) in October 1982. Brazil introduced a divorce law in 1977, still under an authoritarian regime. Argentina introduced a divorce law in 1987 under democratic President Alfonsín. In Ireland, the referendum of 1986 upheld the prohibition of divorce. But a decade later, in the 1995 referendum, the Irish electorate repealed the prohibition, despite the opposition of the Catholic Church. Even deeply Catholic Malta introduced divorce legislation following a referendum in 2011. As of today, every Catholic state in the world, with the exception of the Philippines and Vatican City, has passed some kind of divorce legislation, despite the resistance of the Catholic Church.[20] Yet even in the Philippines, arguably the most religious Catholic country in the world, the Catholic Church was unable to defeat the passage of the controversial 2013 Reproductive Health Law.[21]

The legalization of abortion in Catholic countries has followed a more complex and ambiguous path. In Spain, the PSOE introduced an abortion law in 1985 making induced abortion legal but restricted to the three cases of: serious risk to the physical or mental health of the pregnant woman, rape, and malformations or defects in the fetus. The abortion law was liberalized further in 2010 under socialist Prime Minister Zapatero, basically allowing abortion on demand during the first trimester of pregnancy. In December 2012, the ruling conservative Popular Party, in close alliance with the Catholic Church, drafted a law to ban abortion except in cases of rape and serious health risks to the mother. But two years later, in September 2014, Prime Minister Mariano Rajoy announced that the government was withdrawing the draft law due to lack of consensus within his own party in the face of massive popular opposition.

In Latin America, with the exception of the special cases of Cuba and Puerto Rico, only highly secular Uruguay passed an unrestricted law legalizing

[20] Htun and Weldon, "State Power."

[21] David T. Buckley, "Catholicism's Democratic Dilemma: Varieties of Public Religion in the Philippines," *Philippine Studies: Historical and Ethnographic Viewpoints* 62/2–3 (2014): 313–39; David T. Buckley, *Faithful to Secularism: The Religious Politics of Democracy in Ireland, Senegal, and the Philippines* (New York: Columbia University Press, 2016).

abortion in 2012. Some other Latin American countries (Argentina, Colombia, Peru, Ecuador, Bolivia) have passed more restrictive laws allowing abortion for health reasons. Most Latin American countries still ban abortion or permit it only in order to save the woman's life.[22]

In her comprehensive review of legislative changes on gender-related issues in Latin America, Mala Htun asks the poignant question: "Why were Latin American countries able to legalize divorce, adopt programs to prevent HIV/AIDS, and distribute contraceptives but not liberalize abortion and offer homosexuals greater rights?".[23] Latin American public opinion polls actually offer a plausible answer to this question, which is in line with Htun's own advice to disaggregate issues which, under a feminist liberal agenda, may appear as part and parcel of the same expansion of progressive women's and gender rights. People in Latin America seem to disaggregate and evaluate those issues differently, contradicting both feminist discourses, which tend to lump all of them together as positive developments enhancing women's rights, as well as Catholic moral doctrine, which also lumps them all together in the opposite direction as immoral practices.

The comprehensive 2014 Pew survey of Religion in Latin America, that includes social attitudes toward gender issues, clearly shows that the Latin American public tends to hold significantly different moral evaluations of divorce, contraception, sex outside of marriage, abortion, and same-sex marriage to those held by the church.[24] Only minorities of Catholics in most Latin American countries, from 10 percent in Chile to 39 percent in Peru, hold the opinion that divorce is morally wrong. Clearly, on this issue, a majority of Catholics disagree with the official teaching of the Catholic Church. Similarly, a majority of Catholics tend to accept the liberalization of sexual mores as a positive development. Those who hold that sex outside marriage is morally wrong have become minorities in most countries, from 17 percent in Uruguay to 45 percent in Mexico. Most strikingly, attitudes toward same-sex marriage are changing dramatically. In several Latin American countries the proportion of those who approve of same-sex marriage are already significantly larger than those against it: 62 percent vs 31 percent in Uruguay, 52 percent vs 40 percent in Argentina, 49 percent vs 43 percent in Mexico, 46 percent vs 42 percent in Chile. In Brazil, by contrast, the proportion of those who are against same-sex marriage is still slightly larger, 48 percent, than those who accept it, 45 percent. Most significantly, however, there is a growing generational gap and the younger generation, between 18 and 34 years old, tends to support same-sex marriage to a much larger extent than those who are

[22] Htun and Weldon, "State Power." [23] Htun, "Life, Liberty," p. 351.

[24] Pew Research Center, "Religion in Latin America: Widespread Change in a Historically Catholic Region," November 13, 2014, <http://www.pewforum.org/2014/11/13/religion-in-latin-america/> (accessed November 23, 2016), pp. 69–86.

35 years old or older: the gap is 75 percent vs 56 percent in Uruguay, 65 percent vs 44 percent in Argentina, 63 percent vs 38 percent in Mexico, and 56 percent vs 36 percent in Brazil.

By contrast, majorities of the Catholic population in every Latin American country, with the exception of Uruguay, maintain the view that abortion is morally wrong. In Uruguay, 49 percent of Catholics hold the view that abortion is morally wrong, although many of them clearly support the decriminalization of abortion. The proportion of Catholics who think that abortion is morally wrong is 57 percent in Chile, 64 percent in Argentina, and 71 percent in Mexico. In the rest of Latin America, those who consider that abortion is morally wrong is either over 80 percent or over 90 percent. Interestingly, women are almost as likely as men to say that abortion is morally unacceptable. Most significantly, younger Latin Americans are almost as likely as older Latin Americans to say that abortion is morally wrong.

Only in the case of abortion do Latin American Catholics tend to agree with the teaching of the Catholic hierarchy. On most other sexual moral and gender issues, Latin American Catholics tend to disagree with the official teachings of the Catholic Church, adopting an attitude that could be called "faithful dissent." They agree to disagree with the clerical hierarchy on this particular issue without assuming an attitude of sinful disobedience. They follow their own conscience in good faith. The Pew survey also shows that Protestants across Latin America maintain much more traditional or "fundamentalist" positions on gender and sexual norms.

The gender question is arguably the most serious and complex challenge facing the Catholic Church today.[25] One could argue that, until very recently, indeed until the arrival of Pope Francis, the response of the hierarchy had been mostly inadequate in so far as it tended to view and officially depict the very discourse on "gender" as a dangerous ideology produced by feminism, in the process turning feminism into an ideological foe, indeed into a specter not unlike communism in the nineteenth century. The modern moral principles of life, liberty, equality, and the pursuit of happiness are converging most dramatically throughout the world around issues of gender equality and sexual morality.

The "gender question" is, in many respects, the fundamental moral question of our times in the same way that "the social question" was the fundamental moral question from the middle of the nineteenth century. The Catholic Church, pressed by Catholic dynamics emerging from the grassroots of social Catholic movements, eventually developed a commendable track record of

[25] José Casanova, "The Contemporary Disjunction between Societal and Church Morality," in *Church and People: Disjunctions in a Secular Age*, ed. Charles Taylor, José Casanova, and George F. McLean (Washington, DC: Council for Research in Values and Philosophy, 2012), pp. 127–35.

addressing the social question. But regarding the gender question, the Catholic Church, at least the hierarchy and the *magisterium*, have mainly failed to address theologically the new challenge, contenting themselves with reaffirming traditional teachings which fail to come to terms with the radical social transformation and scrutinize prophetically the signs of the times.

The radical change in circumstances produced by the modern democratic and sexual revolutions, and the fundamental transformations in gender relations and gender roles which both entail, present particularly difficult challenges to the sacred claims of all religious traditions. Not surprisingly, the politics of gender and gender equality are central to politics everywhere and religion is thoroughly and intimately implicated in the politics of gender. Indeed, many analysts have been tempted to interpret what they view as the global emergence of religious "fundamentalism" in all religious traditions as primarily a patriarchal reaction against the common global threat of gender equality, the emancipation of women, and feminism.[26]

The discourses of feminism and secularism have become intertwined today in the same way that communism and atheism became intertwined in the nineteenth century. "Gender" has become, in this respect, the preeminently contested "social question," while "religion" has been thrown, willingly or unwillingly, into the vortex of the global contestation. Traditional religious establishments tend to view feminist agendas, and particularly the very notion of gender, as a historically contingent, socially constructed, and therefore changeable reality; as the greatest threat not only to their religious traditions and their moral authoritative claims, but to the very idea of a sacred or divinely ordained natural order, inscribed either in natural law, Shari'a, or some "right way" universally valid for all times.

At the Second Vatican Council, the Catholic Church embraced theological developmental principles grounded in the historicity of divine revelation, incarnation, and continuous historical unfolding of the divine plans of salvation for humanity that require the church's careful discernment of "the signs of the times." The Catholic *aggiornamento* represented, in this respect, recognition of the fundamental moral principles of secular modernity. The human dignity of each and every person emerges as the guiding principle of the three most consequential documents of the Second Vatican Council, *Gaudium et Spes*, *Dignitatis Humanae*, and *Nostra Aetate*. All three documents share, moreover, the explicit reference to "the signs of the times" and the historicist recognition that we are entering a new age in the history of humanity with important repercussions for our understanding of the unfolding of the mystery of salvation.

[26] Martin Riesebrodt, *Pious Passion: The Emergence of Modern Fundamentalism in the United States and Iran* (Berkeley, CA: University of California Press, 1998).

Actually, the same historicist and developmental recognition appears most poignantly in the section directed to women in the closing speech of the Council, when Pope Paul VI asserted that:

> at this moment when the human race is undergoing so deep a transformation . . . The hour is coming, in fact has come, when the vocation of woman is being achieved in its fullness, the hour in which woman acquires in the world an influence, an effect and a power never hitherto achieved. (<http://w2.vatican.va/content/paul-vi/en/speeches/1965/documents/hf_p-vi_spe_19651208_epilogo-concilio-donne.html>)

Yet this prophetic vision of the unprecedented transformation in gender relations which humanity was experiencing did not have the transformative consequences one should have expected in the life of the church after the council.

Indeed, on issues of gender and sexual moral theology, the Catholic hierarchy, since the publication of the encyclical *Humanae Vitae* in 1968, has reasserted a traditionalist ontological conception of human nature and of human biology based on the essentialist conception of an ahistorical, unchanging, and universally valid natural law. Such a traditional ontological conception is increasingly in tension with the historicist conception of human moral development upheld by the social sciences as well as with the conception of a changing biological–historical nature informed by the new evolutionary life sciences.

Confronted with the radical character of the gender and sexual revolution of the late sixties, the post-conciliar church seemed to be backpedaling and abandoning the historicist, prophetic, and forward-looking discernment of "the sign of the times," reverting to the defense of an unchanging and unchangeable tradition grounded in eternal and divine natural law. The issue here is not one of moral relativism, as a matter of arbitrary individual choice or preference, but that of the clash between fundamental "sacred" moral values. Theologically, any religious community has the right and the duty to uphold what it considers a divinely ordained sacred injunction or moral norm. Sociologically, however, the question is how long any religious tradition, particularly a "catholic" one, can resist the adoption of a new moral value when a near universal consensus concerning the sacred character of such a value emerges in society. To denounce modern moral developments as a reversion to paganism or rampant relativism is to misunderstand modern historical developments.

Sociologically, in reaction to the Catholic Church's official defense of a "traditionalist" position on gender issues and a singularly obsessive focus on "sexual" moral issues, one can observe throughout the Catholic world a dual process of female secularization and erosion of the church's authority on sexual morality. Perhaps for the first time in the accumulative waves of modern secularization women have left the church in large numbers, most dramatically throughout Europe, but increasingly also throughout North America and incipiently in Latin America. Female secularization is probably

the most significant factor in the drastic secularization of Western European societies since the 1960s[27] and in the radical rupture of European Christian "religion as a chain of memory".[28]

Equally crucial, and of grave societal relevance, is the drastic secularization of sexual morality. Increasing numbers of practicing Catholics are disobeying the injunctions of the Catholic hierarchy and following their own conscience on most issues related to sexual morality. Moreover, there is increasing evidence from public opinion polls in Europe, North America, and Latin America that young Catholic adults are explicitly dissociating their sexuality and their religiosity, claiming that religion has absolutely no influence upon their attitudes toward sexuality.

We are witnessing, on the one hand, a church hierarchy which evinces an almost obsessive focus in defending traditional sexual morality, and, on the other, a majority of Catholic faithful in the secular world who not only ignore the moral injunctions of the hierarchy, but feel increasingly comfortable dissociating their religion and their sexuality. One must wonder how far this radical dissociation of private sexuality from religion and even from morality can go and where it may lead. In my view, it is leading to a radical secularization of the private sphere of individual consciousness that parallels the secularization of politics and of the public sphere.

But suddenly, the unexpected election of Pope Francis changed dramatically the nature of the debate, the official discourse coming from the hierarchy, and what appeared to be an acrimonious and growing disjunction between church and secular world on issues of gender. His election brought a surprising sense of renewal and hope to the Catholic Church. Most encouraging and welcome was the change in tone from an inward and institutionally self-absorbed preoccupation with a self-referential church to one of concern and service for every person, with a preferential option for the poor and needy, embracing all of humanity, believers and non-believers.

From the start, Francis has found it natural to speak *urbi et orbi*, to the city and to the globe, in a direct and unassuming language that everyone can understand and appreciate. Equally important has been what was left unsaid. For a long time there was no mention of any of the issues that, for several years if not decades, had been at the center of magisterial and episcopal pronouncements and which served to define Catholic moral confessionalism to insiders and outsiders. There was no mention of contraception, abortion, same-sex marriage, and related gender issues, no critical mention of feminism, the ideology of gender, or the culture of death.

[27] Callum G. Brown, *The Death of Christian Britain: Understanding Secularization, 1800–2000* (New York: Routledge, 2009).

[28] Danièle Hervieu-Léger, *Religion as a Chain of Memory* (New Brunswick, NJ: Rutgers University Press, 2000).

The pope himself has repeatedly mentioned that one should not expect any change in doctrine or teaching from his pontificate. But the change in tone, the relegation of issues of gender and sexual morality from the core to the periphery of church teaching, and the foregrounding of the Sermon on the Mount were in themselves most relevant. A temporary moratorium, for the time being at least, on very divisive sexual and gender moral issues actually served as a welcome respite.

But issues of gender are not going to go away, and the growing gap between church and secular morality on sex and gender will need to be addressed eventually, hopefully in a new spirit and with a new tone. A renewed Catholic Church less self-absorbed in its own clericalism and embracing the poorest and the weakest must perforce pay greater attention to women, who remain the poorest, the weakest, and the least respected peoples in every society and every organization, including "the People of God."

The convocation of the Synod on the Family has finally begun the process and the possibility that the church, the entire People of God, may discern, critically and faithfully, the various aspects of the profound gender revolution is one of the most dramatic in the whole history of humanity. The process began actually with a call to the bishops to discover the sense of the faithful, of Catholics the world over, on issues related to marriage and the family. The synod itself began with the papal insistence on real frank debate with a spirit of authentic readiness to listen to each other, reopening the conciliar dynamics of catholicity. What the frank debates actually evinced was that the Catholic Church is deeply divided on those issues and that much more open conversation, debate, and dialogue at all levels of the church will be necessary to discern which elements of the moral teachings on gender are essential, so on which there can be no disunity; which within the hierarchy of truths are disciplinary and thus left better to the discernment of the local churches; and which should be left to the moral responsibility of the individual conscience.

But above all, what the papacy of Francis has made amply evident is that the Catholic Church throughout the Global South continues to be actively engaged in movements for social justice and peace, in defense of the rights and the human dignity of immigrants and refugees, of landless peasants and indigenous people, of the jobless and the underemployed, and in ecological movements for sustainable development and to protect our common home, the Earth. The Church of Francis continues to be, in many respects, "the voice of the voiceless," accompanying all those on the margins and the peripheries who are the victims of hegemonic processes of globalization. A global Catholic Church in our global age has found its mission in helping global humanity move, in the words of Pope Francis, "from a globalization of indifference to a globalization of fraternity."[29]

[29] Austen Ivereigh, *The Great Reformer: Francis and the Making of a Radical Pope* (New York: Henry Holt & Company, 2014), p. 310–11.

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3

Secularism, Gender Inequality, and the French State

Joan W. Scott

The standard account of secularization has had three aspects: the separation of church and state; the privatization of religion; and the decline of religion as a prominent feature of social and personal commitments. These three aspects led to the conclusion that secularization was one of the marks of modernity, of the evolution from so-called traditional society, steeped in superstition, to modern society, founded on rational belief and scientific mastery. In recent years, social scientists have qualified these blanket characterizations in a number of ways. The separation of church and state is now thought to involve not so much strict separation, as to be a matter of regulation: the subsuming of religious institutions and authority to state control. The privatizing of religion (making it entirely a matter of individual conscience) has also been recast to include the public role majority religions have been allowed or encouraged to play (as guardians of morality, for instance) in secular states. And the expected decline of religion as an important factor in daily life has been challenged by the resurgence of religious affiliation and practice in many parts of the West.[1]

Despite these qualifications, based on many years of research across the social sciences (including history), the old account persists. Or perhaps it is more accurate to say that it has had a resurgence as the question of Islam and the "clash of civilizations" has arisen as a result of the Iranian Revolution of 1979; the increased presence of Muslims in the countries of Western Europe (many of them former colonial subjects); and the attacks on the Trade Towers

[1] There is a vast literature on this that includes Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, CA: Stanford University Press, 2003); Janet Jakobsen and Ann Pellegrini, eds., *Secularisms* (Durham, NC: Duke University Press, 2008); Charles Taylor, *A Secular Age* (Cambridge, MA: Harvard University Press, 2007); Tomoko Masuzawa, *The Invention of World Religions* (Chicago: University of Chicago Press, 2005). See also the many postings on the Social Science Research Council network blog: The Immanent Frame, <http://blogs.ssrc.org/tif/>.

in New York in 2001. In the wake of these events, there is now a new discourse of secularism—itself a polemical term coined in the second half of the nineteenth century by the followers of George Holyoake in England, who sought to remove religion from practical policy concerns, and anti-clericals in France, who were defending the Third Republic from the parties of Throne and Altar. Unlike the nineteenth-century discourse of secularism, twentieth- and twenty-first-century discourse is framed almost entirely in opposition to Islam and makes gender equality one of its central claims. Islam, it is said, is synonymous with the oppression of women, while "secularism" guarantees equality between women and men. Indeed, some argue that gender equality is a primordial value of secular nation-states.[2]

My work and that of many other second-wave feminist historians challenges this characterization of the process of secularization. Postcolonial scholars, too, call into question the idea that the status of women necessarily improved under secular imperial rule. Instead, this work suggests the opposite of secularism's current polemical, civilizational claim: *gender inequality was a constitutive dimension of secularizing Western nation-states*. The case of France is exemplary. There women did not win the vote until 1944—over 150 years after the democratic revolution of 1789. And even then, women continued to occupy a decidedly inferior place in politics, economics, and society. Admittedly, new jobs opened for women, but usually in sex-segregated labor markets, and wage differentials persisted between women and men. Marriage bars were enforced in most professions, making it impossible for women to combine family and work. And laws remained on the books well into the twentieth century that restricted the autonomy of married women as wage earners and as parental authorities. Citizenship granted women the vote, but did not guarantee access to political office. Even after the law on *parité* passed in 2000, the representation of women in parliaments and regional and city councils remained strikingly low—testimony to the intention of male politicians to retain exclusive power despite the law.[3]

[2] For examples, see the comments cited in Dominic McGoldrick, *Human Rights and Religion: The Islamic Headscarf Debate in Europe* (Portland, OR: Hart Publishing, 2006), p. 89; and "L'alternative à l'UMPS ne peut qu'être islamophobie," *Ripostes Laïques*, November 26, 2012.

[3] For a few examples among many more see: Geneviève Fraisse, *Reason's Muse: Sexual Difference and the Birth of Democracy*, tr. Jane Marie Todd (Chicago: University of Chicago Press, 1994); Armelle Le Bas-Chopard and Janine Mossuz-Lavau, *Les Femmes et la Politique* (Paris: L'Harmattan, 1997); Christine Delphy, *Un universalisme si particulier: Féminisme et exception française* (Paris: Syllepse, 2010). See also volumes four and five of Georges Duby and Michelle Perrot, eds., *A History of Women* (Cambridge, MA: Harvard University Press, 1994); and Christine Fauré, *Democracy without Women: Feminism and the Rise of Liberal Individualism in France*, tr. Claudia Gorbman and John Berks (Bloomington, IN: Indiana University Press, 1991). On *parité*, see Joan Wallach Scott, *Parité: Sexual Equality and the Crisis of French Universalism* (Chicago: University of Chicago Press, 2005).

Notwithstanding persisting empirical inequalities, French politicians and some public intellectuals insist that *laïcité*—a uniquely French version of secularism—is a guarantee of gender equality. In the current debates about Muslim religious practices, much is being made of sexual emancipation, as if the free choice of lovers by French women (and not issues of wages, access to politics, domestic violence, and other such matters) was the only true measure of equality between women and men.

THE NEW *LAÏCITÉ*

Laïcité, the French notion of secularism, is very much at issue these days in debates about the status of Muslims, debates that have only intensified in the current immigration crisis affecting all of Europe. Scholars have taken varying positions on the concept. In *Le sens de la République*, the historian and political theorist Patrick Weil stresses the importance of assimilation for constructing a unified national community.[4] And he justifies the 2004 law prohibiting Islamic headscarves in public schools in the name of protecting the liberty of conscience of those young women who want to resist family and communal pressure to wear them. Weil's idea of the place of religion in the republic is very much an Enlightenment one—there must, of course, be tolerance of religious conscience (preferably privately and individually held), but always subordinated to a secular mandate. The state is not merely neutral in matters of religion, it must be proactive, protecting the young from inherently repressive practices imposed by families and religious communities.

In contrast, historian Jean Baubérot argues for a literal reading of the meaning of *laïcité* in the context of the law of 1905. In a book written in 2011 with Micheline Michot, Baubérot distinguishes between *laïcité* (secularism) and secularization. Whereas, he says, secularization refers to a sociocultural process that replaces spiritual belief with rationality and individualism (the "disenchantment" referred to by Max Weber),[5] *laïcité* is a preeminently political and juridical concept that contains four principles: freedom of individual conscience; equality and non-discrimination for believers of whatever faith and for non-believers as well; the separation of religion and politics; and the neutrality of the state in relation to diverse religions.[6] When the two words—*laïcité* and secularization—are used as synonyms, he points out, "any

[4] Patrick Weil, *Le sens de la République* (Paris: Grasset, 2015).

[5] Max Weber, "The Social Psychology of the World Religions," in *From Max Weber*, ed. H. H. Gerth and C. Wright Mills (Oxford: Routledge, 1998), p. 282.

[6] Jean Baubérot and Micheline Milot, *Laïcités sans frontières* (Paris: Seuil 2011), p. 307.

reflection on the relationship between politics and religion is short-circuited by a sociocultural process. This confusion is particularly troublesome when it concerns Islam."[7] If *laïcité* is taken as a political concept referring to state neutrality, Baubérot says, it follows that the state exceeds its mandate when it sets limits to the forms religious practice and individual conscience can take; it violates rather than implements the principles that the architects of the law of 1905 had in mind. I would add that the current insistence that *laïcité* carries with it a promise of gender equality introduces a novel idea into the concept, which historically had nothing to say about discrimination and the political exclusion of women.[8]

Gender equality is not the only novel use to which *laïcité* is being put these days. Baubérot is writing against the emergence of the official articulation of what is called *la nouvelle laïcité,* presented in a report of that name by François Baroin in 2003. Baroin was asked by the then prime minister, Jean-Pierre Raffarin, to offer ways of addressing the threats of what seemed an increasing communalism and a turn to fundamentalism among Muslim populations. Baroin reminded the legislators who read his report that freedom of expression must be counterbalanced by the values of the republic. He recommended a series of measures to achieve that end, one he associated with the need to (these are his words, echoing those of many others then and since) "reconquer the lost territories of the Republic."[9]

In the years that followed, *la nouvelle laïcité* took form in a number of legislative and judicial actions. The first was the law of 2004 banning conspicuous signs of religious affiliation in public schools—known unofficially as the headscarf ban.[10] The next was a ministerial memorandum reminding public servants of their (long-standing) obligation of neutrality on the job—no sign of religious affiliation was permitted. In 2008, a woman in a niqab (a total face and bodily covering) was denied naturalization on the grounds of a "failure of assimilation" to French society. In 2010, any facial covering worn in public space was outlawed on the grounds both of national security and because women covered this way were "placed in a situation of exclusion and inferiority incompatible with the constitutional principles of liberty and equality." That same year, a woman working in a private crèche was fired

[7] Ibid., p. 15.

[8] Stéphanie Hennette Vauchez, "L'autre/l'étrangèr(e), figure rhétorique centrale des 'guerres du droit' livrées dans le débat française sur la laïcité (2004–2013)," unpublished paper. See also Florence Rochefort, "Laïcité et droits des femmes: Quelques jalons pour une réflexion historique," *Archives de philosophie du droit* 48 (2005): 95–107.

[9] For Baroin's report, see <http://www.voltairenet.org/rubrique506.html?lang=fr>. The section of the report on the "lost territories" is cited in "La Nouvelle Laïcité, machine de guerre contre l'Islam," <https://bourgoinblog.wordpress.com/2015/01/22/la>.

[10] Joan Wallach Scott, *The Politics of the Veil* (Princeton, NJ: Princeton University Press, 2007).

for wearing a headscarf on the grounds that, though the childcare center that employed her was private, she was performing a "public service." (In that case, known as the Baby Loup affair, a higher court eventually ruled that the principle of *laïcité* did not apply to a private establishment.)[11] In 2015, the *Guardian* ran a story recounting the most recent controversy about the application of the French notion of *laïcité*. "The battle over national identity is being played out on children's lunch plates," the article began. "Is scrapping a pork-free option a victory for secularism—or just an example of religious intolerance?" The article referred to the fact that, in a number of municipalities headed by right-wing mayors, Muslim and Jewish children would no longer be offered a pork-free alternative at lunchtime. The mayor of one of these towns claimed that, in accord with the 1905 law on the separation of church and state, he was preserving the neutrality of the public sector by refusing to recognize the claims of a religious minority (his target was Muslims); his goal, he insisted, was to protect the integrity of the French national identity. Nicolas Sarkozy, campaigning for the presidency in 2017, supported these mayors in the name of *laïcité*: "if you want your children to have eating habits based on religion," he said on TV, "go to a private faith school." Critics of the policy have condemned the politicization of school lunches and the use of *laïcité* to justify it. The sociologist François Dubet writes that "talking about secularism has [now] become a way to claim a white Christian France, where everyone shares the same values and traditions, a way to say we don't want Muslims."[12]

It's not only lunches, of course, that are at issue. The National Front party leader, Marine Le Pen, referred to Muslims praying in the street (when their neighborhood mosques were overflowing or, as is sometimes the case, nonexistent because of zoning laws that prohibit construction) as "occupiers"—evoking the German occupation of France during the Second World War and thus associating Muslims with Nazis.[13] And the Collective against Islamophobia in France reported over a hundred incidents in 2014 in which teachers denied girls entry to classrooms because their long skirts were taken to be unacceptably "conspicuous" religious signs—signs that, like the headscarves outlawed in 2004, were taken to signify the subordination of women. It was in

[11] Stéphanie Hennette Vauchez and Vincent Valentin, *L'Affaire Baby Loup ou la Nouvelle Laïcité* (Issy-les Moulineaux: Textenso Editions, 2014); this cites all of the cases mentioned in this paragraph.

[12] Angelique Chrisafis, "Pork or Nothing: How School Dinners are Dividing France," *The Guardian*, October 13, 2015, <http://www.theguardian.com/world/2015/oct/13/pork-school-dinners-france-secularism-children-religious-intolerance>.

[13] Angelique Chrisafis, "Marine Le Pen Goes on Trial Charged with Anti-Muslim Hate Speech," *The Guardian*, October 20, 2015, <http://www.theguardian.com/world/2015/oct/20/marine-le-pen-trial-charged-anti-muslims-hate-speech>.

the name of the "primordial" republican value of gender equality that the clothing of these girls had to be regulated.[14]

In her important work on this topic, the legal scholar Stéphanie Hennette Vauchez describes the changed conception of *laïcité* as having two aspects. The first is that the injunction for state neutrality in matters of religion has been extended to include private citizens. Thus, for example, while schools were long thought to be the place where "peasants were turned into Frenchmen," where children would be indoctrinated into republican citizenship, now adherence to the republic's secular ideals is a prerequisite for entry into public school.[15] The second aspect of the new *laïcité* is that the neutrality of the state has been enlarged to encompass all public space, so that not only schools and government offices, but the street itself are public spaces that require those who enter it to respect the mandate of neutrality. These are major deviations from the 1905 understanding of the separation of church and state (as Baubérot described it). It's as if the very sight of Muslim difference must be eradicated from public view and thus from any perception of Frenchness or of France.

Hennette Vauchez points out as well that while Muslims in general have been targeted by this legislation, it is Muslim *women* who have borne the brunt of attention. Their clothing is the object of regulation, the visibility of their faces and bodies a matter of grave concern, the question of their equality (often measured by Western standards of sexual liberation) a primary consideration for legislators, journalists, some feminists, and many public intellectuals. Interestingly, if the new *laïcité* focuses on the dangers embodied by *Muslim women*, the old *laïcité* worried a great deal about the religious propensities of *French women*. That is because the discourse of secularists—those who sought to replace the authority of the Catholic Church with Enlightenment values of science and reason—rested on a set of distinctions between public and private, politics and religion, political and domestic, reason and affect, men and women. Secularism recognized liberty of private religious conscience as long as it was held privately; it also defined the family, with women at its center, as a private institution. The privatizing of religion and of a woman's domain led to the equation of women with religion in eighteenth- and nineteenth-century France.[16]

[14] *Le Monde*, "Nouvelle polémique sur une jupe longue du lycée," May 5, 2015, <http://www.lemonde.fr/religions/article/2015/05/06/nouvelle-polemique-sur-une-jupe-longue-au-lycee_4628972_1653130.html>.

[15] Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870–1914* (Stanford, CA: Stanford University Press, 1976).

[16] Joan Wallach Scott, "Sexularism: On Secularism and Gender Equality," in Scott, *The Fantasy of Feminist History* (Durham, NC: Duke University Press, 2011), pp. 91–116.

THE OLD *LAÏCITÉ*

The French Revolution was a critical moment in the reordering of the relationship between church and state. The role of the Catholic Church in legitimating the monarchy meant that a stark opposition between the religious and the secular structured revolutionary discourse and institutions. When it was permitted, religious practice was regulated by the state, which paid wages to priests who swore allegiance to the new regime. Although the association of women and unreason was evident much earlier, it was the Revolution of 1789 that established the link in republican political discourse between women and religion. Writes historian Paul Seeley, "the Revolution's embodiment of the citizen as a rights-bearing and confessionally neutral male depended on a derogatory identification of religion with the female."[17]

Historian Olwen Hufton noted that the actions of counterrevolutionary women in peasant villages, those who defended non-juring priests and clandestinely practiced Catholic rituals for baptisms and burials, "provided the evidence for the politicians of the Third Republic [almost a century later] to withhold the vote from women."[18] During the dechristianizing campaign in Year II of the French Revolution, the example of resistant village women became synonymous with women in general. So, while one comment from a *représentant en mission* was directed at a specific group of women ("And you, you bloody bitches, you are their [the priests'] whores, particularly those who attend their bloody masses and listen to their mumbo-jumbo"[19]), another extended the condemnation to women as a whole ("Remember, it is fanaticism and superstition that we will be fighting against; lying priests whose dogma is falsehood . . . whose empire is founded upon the credulity of women. These are the enemy"[20]). In this view of things, women were the knowing consorts or the

[17] Paul Seeley, "O Sainte Mère: Liberalism and the Socialization of Catholic Men in Nineteenth-Century France," *Journal of Modern History* 70/4 (1998): 866. See also Dorinda Outram, "Le langage mâle de la vertu: Women and the Discourse of the French Revolution," in *The Social History of Language*, ed. Peter Burke and Roy Porter (Cambridge: Cambridge University Press, 1987), pp. 120–35.

[18] Olwen Hufton, "Women in Revolution," *French Politics and Society* 7:3 (1989), 66. This is not to say that women were not already (during the ancien régime) identified as evincing greater religiosity than men, only that in the discourses of anti-clericalism in the nineteenth and twentieth centuries, the Revolution of 1789 was taken to be an originary moment. On this, see Robert Kreiser, "Enthusiasm in Early Eighteenth-Century Paris: The Convulsionaries of Saint-Médard," *Catholic Historical Review* 61/3 (July 1975): 353–85; Frank Tallet and Nicholas Atkin, eds., *Religion, Society and Politics in France since 1789* (London: Hambledon Press, 1991); and Keith Thomas, "Women and the Civil War Sects," *Past and Present* 13/1 (1958): 42–62.

[19] Cited in Richard Cobb, *Les armées révolutionnaires: instrument de la terreur dans les départements, avril 1793-Floréal an II*, vol. 1 (Paris: Mouton, 1961–3), p. 450.

[20] Frank Tallet, " Dechristianizing France: The Year II and the Revolutionary Experience," in *Religion, Society and Politics in France since 1789*, ed. Tallet and Atkin, p. 26.

inevitable dupes of treasonous clerics. In either case, it was the greater emotional vulnerability of their sex that accounted for their actions. The opinion of a Dr. Moreau, writing in 1803, was widely shared: "Women are more disposed than men to believe in spirits and ghosts; . . . they adopt all superstitious practice more readily; . . . their prejudices are more numerous."[21]

Throughout the nineteenth century and into the twentieth, there was in France an intensifying struggle between clericals and anti-clericals in which the question of women figured prominently. Secular republicans adorned their city halls with busts of Marianne (an idealized classical feminine figure)[22] in the same years that church authorities revived the cult of the Virgin Mary; historians of the Middle Ages produced what Zrinka Stahuljak calls "pornographic archaeology"[23]—accounts of the perverted sexual escapades of supposedly celibate priests and nuns—even as the Catholic recruitment of religious women grew by leaps and bounds. The opposition between rational patriotic republican men and their unreliable, unreasonable women usually invoked statistical evidence on its behalf. And it is certainly true that the French Catholic Church drew increasing numbers of women to religious congregations and lay charitable activities over the course of the century. The ratio of men religious to women religious changed dramatically, from 3:2 in 1803 to 2:3 by 1878; and the number of nuns increased tenfold from about 13,000 in 1808 to 130,000 by the end of the century. Well after the removal of clerical teachers from public schools in the 1880s, the religious education of young children, particularly girls, remained in the hands of Catholic sisters. And the church recruited large numbers of married *bourgeoises* to its philanthropic associations, making (in the estimation of one historian) the "charitable lady . . . among the most ubiquitous public figures in the 19th century city [Paris] that most epitomized the modern age."[24]

Voluntary charitable activity, although performed in public, was considered an extension of women's familial and domestic role. The recruitment of women for this work was, to be sure, the result of a concerted effort on the part of church authorities to undermine the secularists, but it succeeded by

[21] Cited in Michelle Perrot, "Introduction," in *A History of Private Life*, ed. Philippe Ariès and Georges Duby (Cambridge, MA: Harvard University Press, 1991), vol. 4, p. 44.

[22] Maurice Agulhon, *Marianne into Battle: Republican Imagery and Symbolism in France, 1789–1880*, tr. Janet Lloyd (Cambridge: Cambridge University Press, 1981).

[23] Zrinka Stahuljak, *Pornographic Archaeology: Medicine, Medievalism, and the Invention of the French Nation* (Philadelphia, PA: University of Pennsylvania Press, 2013).

[24] Sarah Curtis, "Charitable Ladies: Gender, Class and Religion in Mid-Nineteenth-Century Paris," *Past and Present* 177 (2002): 121–56. The information on women and the Catholic Church can be found in: Michele de Giorgio, "The Catholic Model," in *A History of Women*, ed. Duby and Perrot, vol. 4, pp. 166–97; Ralph Gibson, "Le catholicisme et les femmes en France au XIXe siècle," *Revue de l'histoire de l'Eglise de France* 79/202 (1993): 63–93; and Claude Langlois, "Catholics and Seculars," in *Realms of Memory*, ed. Pierre Nora and tr. Arthur Goldhammer (New York: Columbia University Press, 1996), pp. 109–44.

appealing to exactly the image of women the secularists endorsed—one that emphasized their subordination to male authority, their role as agents and reproducers of morality, their self-sacrificing, caring maternal instincts, and their intuitive spirituality. It was in those terms that nineteenth-century bourgeois Catholic men described their faith—as inspired by the women in their lives. Devout Catholic men and skeptical republicans, Seeley writes, both "affirmed their political and religious identities by tying Catholic faith and ritual to a private female sphere."[25] In an odd inversion of causality, the stereotyping provided by republicans may well have helped to produce the very alliance they most feared. At the very least, it did little to counter the terms of the church's appeal to women. But that may have been beside the point. Importantly, the anti-clerical portrayals of the religious inclinations of women worked to equate masculine identity with republicanism. On the one hand, anti-clericals called upon republican husbands to turn their wives away from priestly influence; on the other hand, the depiction of women as inherently superstitious confirmed the natural division of labor between the sexes and justified the inequality that followed from it.

Nowhere is this more evident than in the writings of Jules Michelet, the great historian of the French nation and an ardent anti-clerical. Michelet was born in 1798, in the waning days of the French Revolution; he died in 1874, in the early years of the Third Republic. In addition to vivid histories of the lives of kings and courtiers, revolutionaries and their enemies, he wrote inflammatory moralizing treatises on love, women, and the family, as well as denunciations of the perversities and evils of priests, confessors, bishops, and other representatives of the Catholic Church. His writings on these topics drew criticism as well as praise and I do not offer them as evidence that all of France shared his opinions.[26] What they do illustrate is the way in which a great historian associated women and religion in secularism's polemical campaign.

Michelet's writings on women, the family, and the church were directed at husbands. *Du Prêtre, de la Femme, de la Famille* opens with a shocking announcement. "It was generally thought that two people were sufficient for a marriage, but that has changed. The new system . . . has three constituent elements." These are "the man, strong and violent; the woman, a creature weak by nature; the priest, born a man and strong, but who wants to make himself weak so as to resemble a woman . . . and so interpose himself between them."[27] As result of this invasion, "our wives and our daughters are raised and

[25] Seeley, "O Sainte Mère," 891.

[26] Jules Michelet, *Oeuvres Complètes* (Paris: Flammarion, 1971–). See vol. 18 (1985), pp. 655–747, for critical reviews and comments on his work.

[27] Jules Michelet, *Du Prêtre, de la Femme, de la Famille* (Paris: Hachette, 1845), p. vi. Numbers in parenthesis in the text refer to this text.

governed by our enemies" (14). These enemies are at once political—they represent the past and so are obstacles to progress—and personal—they are adept at the art of seduction, in effect cuckolding husbands whose distractions at work have made them strangers to their wives and children (309).

Most of the book is devoted to accounts of the machinations of priests, starting with Jesuit confessors in the sixteenth century, tracking the "ardent" letters exchanged between these men and the women they counseled, and ending in the nineteenth century, when the sons of peasants replaced the learned men of the religious orders of the past. If, in the seventeenth century, the likes of Fénelon and Bossuet charmed and seduced with their cultured intellects, the *curés* of the nineteenth century practiced the cunning and perseverance of the peasant cultures from which they came. In both cases, confessors manipulated the "soft and fluid natures of women," appealing to their passion, love of children, and need for affection. Intoning the language of devotion, they, in effect, became lovers: "you can't always tell who is speaking, the lover or the confessor" (69). In Michelet's fantasized scene of seduction, the two achieve an intimacy denied the rightful husband. In a dark corner chapel of the church, "this emotionally agitated man, this trembling woman, sitting so close to one another, talk in hushed voices of the love of God" (214). She is "on her knees," with head bowed before the priest as he listens to her confession. Learning her most intimate secrets, those unknown even to her husband, he achieves mastery, and thereby "recovers his manhood . . . and while she is weak and disarmed, he lays upon her the heavy hand of a man" (228). The relationship deepens and, inevitably, "for the soul to be truly yours, one thing is lacking . . . the body" (271). But the "voice of concupiscence" (270) is seemingly deflected by the priest onto love for God: "How fight against a man who disposes of paradise, and beyond that, hell, to make himself loved?" (279). How, in other words, claim power from this man who will go to any lengths to dispossess the republican husband of his wife? And by extension, how rescue the secular state from the authority of the church?

What can be done to reclaim women for their husbands? How can the secular men to whom Michelet appeals turn their wives away from the lure of the church? The reasons for their inaction are clear: "victims of the division of labor, often condemned to a narrow specialization," modern men have become strangers to their wives and children, leaving the affective terrain to the Jesuits (301). But it is imperative that they now take heed: "Secularists, as we all are—magistrates, politicians, writers, solitary thinkers—today we must do what we haven't yet done: take in hand the cause of women" (xxiv). The "cause of women" is not their emancipation in political terms, rather, it has to do with acquiring intimate knowledge of the kind science offers. This knowledge reveals that woman is weak: she "is a sick person . . . a person wounded each

month, and who suffers almost continually from the wound and its scar."[28] Effectively and repeatedly castrated, she is the victim of a cyclical biology that men are spared.

Men's time, for Michelet, is the linear time of history; women's, the time of eternal repetition: "History, which we so stupidly decline in the feminine, is a rude and savage male, a sunburnt, dusty traveler, Nature is a woman."[29] To rescue women from the lure of the church was not to alter their nature, but to bring their difference into line with the needs of the republican state. Michelet appealed to husbands to change things by regaining control of the private side of their lives, studying their wives to better manage them. This control would be aided by laws against the clergy (which he consistently advocated), but also by implementing laws already in place—civil laws (based in France and elsewhere in Europe on the Code Napoléon), which made the family, and the father's supremacy within it, the cornerstone of secularizing nation-states. In this way, the superiority of state regulation was established as natural and, reciprocally, the subordination of women to men was naturalized.

Michelet's call to action required concrete changes, but it also firmly secured the representation of women's leanings to religion as a persistent danger to the republic. This representation was evident well into the twentieth century, in socialist and syndicalist as well as parliamentary rhetoric. Republican legislatures repeatedly rejected bills for women's suffrage on the grounds that the female vote would inevitably enhance the power of the church. In 1907, the Radical Party leader, Georges Clemenceau, warned that "if the right to vote were given to women tomorrow, France would suddenly jump backwards into the middle ages."[30] But at the same time, educational authorities debated the wisdom of removing religion entirely from girls' training. Françoise Mayeur reports that the 1880 law named for its sponsor, Camille Sée—a law aimed at replacing convent educations with public schools—called for including in the new curriculum the advice to teach girls their "duties toward God," presumably to provide them with the moral instruction they would transmit as mothers. The provision remained in place until 1923, Mayeur tells us, and then was only briefly rescinded.[31] We don't know how closely the new generations of republican teachers adhered to this advice, but it is telling nonetheless. In the eyes of some legislators and academics, lessons about God were apparently acceptable when transmitted by lay teachers,

[28] Jules Michelet, *L'Amour* (1858), cited in Roland Barthes, *Michelet*, tr. Richard Howard (New York: Hill and Wang, 1987), pp. 165–6.

[29] Cited in Barthes, *Michelet*, p. 148.

[30] Cited in Steven C. Hause, with Anne R. Kenny, *Women's Suffrage and Social Politics in the French Third Republic* (Princeton, NJ: Princeton University Press, 1984), p. 16.

[31] Françoise Mayeur, "The Secular Model of Girls' Education," in *A History of Women*, ed. Duby and Perrot, vol. 4, p. 245.

unacceptable when they came from the clergy.[32] Indeed, belief in the complementarity of the sexes was included in the curriculum with or without reference to God; women must be prepared to offer the moral and spiritual guidance that was the vocation of their sex. All of this suggests that the attribution of (dangerous or benign) religiosity to women was firmly in place in the discourses of republican France.

Writing in 1908, the French suffragist Hubertine Auclert refused the idea—regularly used to deny women the vote—that enfranchising women would mean more votes for the church party. The idea that religious sentiments disqualified women was "a bogeyman, as imaginary as the ones used to scare little children":

> Why are believing women treated more strictly than believing men? Men aren't asked for their philosophical ideas when they are given a ballot: priests, pastors, rabbis are treated no differently than free-thinkers.[33]

The attribution of innate religious sensibility to women as a group, she argued, was a pretext. Religious men were allowed to vote because they were men; women were denied the vote because they were considered inferior beings. The hypocrisy of secularists on this issue infuriated her: they were perpetuating religious teachings about women's inferiority even as they refused the suffrage to women because of their supposed religious attachments. Auclert insisted that the hypocrisy of secularizers extended to their toleration of forms of religion even more oppressive to women than Christianity. In Algeria, she wrote in her 1900 book *Les Femmes arabes en Algérie*, the recognition of Qur'anic law for matters concerning the family, marriage, and sexuality perpetuated the degradation of native womanhood. If French women were to be allowed to participate in the "civilizing mission" as fully enfranchised citizens, they would bring enlightenment to French administrators and so to Algeria. As it was, the denial of the vote to "cultivated white women" while it was granted to "savage blacks" undermined the secular mission.[34] "To secularize France is not only to cease paying for the teaching of religious dogmas, it is to reject the clerical law that follows from these dogmas and that treats women as inferior."[35] But it was not religious dogma that informed republicans; theirs was a fully secular notion of the way in which the differences of sex that they attributed to nature explained the different sensibilities and so the necessarily asymmetric social roles of women and men.

[32] J. P. Daughton, *An Empire Divided: Religion, Republicanism, and the Making of French Colonialism, 1880–1914* (Oxford: Oxford University Press, 2006), p. 124.

[33] Hubertine Auclert, *Le Vote des Femmes* (Paris: V. Giard & E. Briere, 1908), pp. 56–7.

[34] Hubertine Auclert, *Les Femmes arabes en Algérie* (Paris: Société d'Editions Littéraires, 1900), p. 63.

[35] Auclert, *Le Vote des Femmes*, pp. 56–7.

WOMEN AND THE "CIVILIZING MISSION"

France was a colonial power in the nineteenth century and there were strong contrasts offered between the "liberated" situation of French women and that of the oppressed females in conquered Arab lands. The contrast rested not on the equality between women and men for such things as citizenship, standing in civil law (on matters of family and divorce), or access to employment and education, but on the liberal notion of individual consent. Alexis de Tocqueville is a good example of this; he attributed the inequality he observed between marital partners in America to women's exercise of choice. In a chapter entitled "How Americans understand equality between men and women," he explained the hierarchical and unequal divisions of labor between them in his own way: "In the small society of husband and wife, as in the larger political society, the object of democracy is to regulate and justify necessary exercises of power." In the family, this power belonged to "the natural head of the conjugal association . . . the husband." Women, he noted, "glorify themselves by voluntarily abandoning their will and they gain status by submitting to the yoke . . . "[36] This notion of complementarity denied an apparent inequality by defining gender asymmetry as (what a recent commentator dubbed) "a particular form of equality."[37]

Carole Pateman has written at length about this in her classic *Sexual Contract*.[38] But the liberal concept of voluntarism is not an outdated notion. It continues today in the idealization of "seduction" and of women's "loving consent" as a trait of French national character. According to Mona Ozouf, "the destiny of the two sexes is not symmetrical . . . love is never the triumph of the ego: to love another is to wish for his well-being, even if it means submitting one's personal needs to his . . . this relation is not servitude, but amorous consent, a fruit of natural attraction."[39]

The asymmetry of the gender relationship was normalized in the nineteenth century (and is still) by a contrast with populations—Arab/Muslim for the most part—said to be "savage" and uncivilized. The liberal agency attributed to French women was deemed absent in societies where women were said to be oppressed by Islamic laws and customs, sexually exploited, and cloistered in their homes.[40] Even as she denounced French women's exclusion from

[36] Alexis de Tocqueville, *Oeuvres complètes*, vol. 1: *De la Démocratie en Amérique, Troisième partie, ch. XII* (Paris: Michel Lèvy Frères, 1866), p. 220.

[37] Philippe Raynaud, "Les femmes et la civilité: aristocratie et passions révolutionnaires," *Le Débat* 57 (novembre–décembre 1989): 182.

[38] Carole Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988).

[39] Mona Ozouf, "A Propos du 'Consentement Amoureux': les douces lois de l'attraction," *Le Nouvel Observateur*, November 26, 1998.

[40] Julia Clancy-Smith "La Femme Arabe: Women and Sexuality in France's North African Empire," in *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira El Azhary

citizenship, Auclert offered a contrast between her situation and the degraded plight of native Algerian women. She referred to "these women buried alive who can be strangled by their husbands with impunity," and to the ways in which promiscuous sexual practices followed from Islamic family law.[41]

The point is that there is a long-standing tradition that associates agency with French women—even if it is the agency that leads to "voluntary sacrifice of their will"—and lack of agency with Muslim women. It is what led the wives of colonial administrators in Algeria to stage an unveiling ceremony for Muslim women in 1958 in order to demonstrate the emancipatory promise of the civilizing mission.[42] It is what led Claude Habib in 2006 to contrast the open sexuality of the French with the repressed sexuality of Islam. The veil, she says, flouts "an implicit norm of the relations between the sexes—the powerful influence of feminine beauty and of men's allegiance to it."[43] The veil covers what *ought* to be seen. As a socialist deputy put it in the Assemblée Nationale in 2010,

> if there is an image that comes to mind to illustrate the gulf that separates the wearing of the niqab from the Republic, it is Marianne: the woman who wears the cap of liberty, who walks with a proud face, shoulders high, her breast bared [*la gorge offerte*]. This woman exposes herself, she displays herself.[44]

Marianne incarnates the secular woman, she "exposes herself, she displays herself." She is ready to play the game of seduction as Habib and others have celebrated it. In the debates about headscarves and niqab, the importance of women's sexual display is paramount. As anthropologist Mayanthi Fernando has shown, "natural" femininity is equated with the wearing of short skirts and make-up. She describes the testimony of a leader of the Franco-Maghrebi organization, Ni Putes, Ni Soumises, before the National Assembly Commission (the Gerin Commission) studying the banning of the niqab. Sihem Habchi favored the ban and declared that, unlike veiled Muslim women, she was not ashamed of her body:

> She removed her jacket to reveal her bare shoulders. The commission members applauded, presumably appreciative of the embrace of secularity that her bare shoulders represented. Indeed, Habchi, Amara [another leader of NPNS] and the Gerin Commission voice their criticism of veiling as a defense of secularism,

Sonbol (Syracuse, NY: Syracuse University Press, 1996), pp. 52–63; Paul Silverstein, *Algeria in France: Transpolitics, Race and Nation* (Bloomington, IN: Indiana University Press, 2004).

41 Auclert, *Les Femmes arabes*, p. 24.

42 Todd Shepard, *The Invention of Decolonization: The Algerian War and the Remaking of France* (Ithaca, NY: Cornell University Press, 2006).

43 Claude Habib, *Galanterie française* (Paris: Gallimard, 2006), p. 413.

44 D. Hoffman Rispal, available at: <https://2007-2012.nosdeputes.fr/parlementaire/daniele-hoffman-rispal/tag/port> (accessed November 21, 2016). Quoted by Vauchez, "L'autre/l'étrangèr(e)," p. 15.

> linking secular values like individual autonomy and sexual equality to a particular mode of hetero-femininity and to particular sexual protocols.[45]

In this there persists the idea that liberal subjects enjoy a voluntarism denied to Muslims because of their religion, even when women in hijab or niqab insist that they have *chosen* to wear these garments.

A tenet of secularism, past and present, is that free choice and religion are antithetical. There is thus only one objective interpretation of the veil for these legislators, despite its disputed and varied interpretations among Muslims. So insists Deputy André Gerin: "the only meaning of the niqab [*le voile intégral*] is voluntary servitude."[46] There is no such thing as being free to choose the veil. The Conseil Constitutionnel agrees: "women who cover their faces, voluntarily or not, place themselves in a situation of exclusion and inferiority manifestly incompatible with the constitutional principles of liberty and equality."[47] The certainty about the meaning of their dress meant that women wearing veils and niqabs weren't consulted when laws outlawing them were under consideration; presumed to be victims of their fathers, husbands, brothers, or more generally, their religion, they were rendered voiceless and so unheard. Instead, the state acted on their behalf to protect them from the oppression to which they are presumably subject, ironically, by punishing them for holding beliefs or engaging in practices considered antithetical to republican culture.

What is at stake is the desire to impose a certain nationalist vision of a homogeneous state. This is what Elisabeth Badinter meant when she insisted that the niqab violated "the duty of fraternity,"[48] and what the court meant when it ruled that a woman wearing one evinced "a failure of assimilation."[49] Political theorist Eoin Daly suggests that the "new laïcité" "speaks to a conceptualization of laïcité as an instrument of *stability*, which denies religions public recognition and thus affirms a republican ideal of citizenship by checking the political force of infra-state identities. In practice, this . . . conception often tends to be deployed as a form of tacit ethno-nationalism."[50]

[45] Jennifer S. Selby and Mayanthi L. Fernando, "Short Skirts and Niqab Bans: On Sexuality and the Secular Body," blog post on The Immanent Frame: <http://blogs.ssrc.org/tif/2014/09/04/short-skirts-and-niqab-bans>. See also Mayanthi L. Fernando, *The Republic Unsettled: Muslim French and the Contradictions of Secularism* (Durham, NC: Duke University Press, 2014).

[46] Assemblée Nationale, "Rapport d'Information no. 2262," p. 43. Cited in Vauchez, "L'autre/l'étrangèr(e)," p. 11.

[47] Conseil Constitutionnel, 2010-613DC, October 7, 2010. Cited in Hennette Vauchez and Valentin, *L'Affaire Baby Loup ou la Nouvelle Laïcité*, p. 41.

[48] Cited in Eoin Daly, "Laïcité, Gender Equality and the Politics of Non-Domination," *European Journal of Political Theory* 11/3 (2012): 303.

[49] Conseil d'Etat, L'arrêt Machbour, 27 juin 2008, #286798.

[50] Eoin Daly, "Public Funding of Religions in French Law: The Role of the Council of State in the Politics of Constitutional Secularism," *Oxford Journal of Law and Religion* (2013), p. 24.

WOMEN AND RELIGION

The old *laïcité* portrayed women as a danger to the republic because of their religious sensibilities. And it contrasted the more "civilized" situation of French women with the barbarous treatment of Arab/Muslim women in the colonies. French women got to exercise free will (even if it meant "loving consent" to subordination), but their sexuality was contained within the marital relation and directed to the exigencies of familial, racial, and national reproduction. The sociologist Emile Durkheim noted that differentiation (sexual and social) was a mark of modernity. As civilization evolved, he wrote, woman "retired from warfare and public affairs and consecrated her entire life to her family."[51] Muslim women, in contrast, were represented as promiscuous, especially if hidden behind impenetrable veils. The fantasies of the colonists projected all manner of erotic practices on to them, while feminists like Auclert found public displays of sexuality abhorrent.

Today the representations are reversed. Muslim women are portrayed as sexually repressed, their "natural" femininity covered over and denied. It is "uncovered" French women who are depicted as sexually emancipated, free to have affairs outside of marriage and to sleep with whomever they choose. Sex has become the new bottom line for defining the human, and sexual liberation is touted as the highest achievement of secularism. The formal political equality of abstract individuals (historically coded as masculine) has been replaced by the equality of sexually active individuals (represented by a feminine or feminized figure); agency is located not in the reasoning mind, but in the desiring body.[52] When equality is defined in this way, it obscures other dimensions of gender inequality in France—in markets, politics, jobs, and law.

French women are no longer seen as a religious threat; the religious threat is now embodied in veiled Muslim women. But the association of women and religion, inherited from an earlier anti-clerical moment, remains. And *laïcité* continues to secure the meaning of its vision of gender equality with a contrast between a liberal notion of individual free choice (women's subordination in marriage in the nineteenth century; their sexual emancipation in the twenty-first century) and the apparent lack of such freedom (forced promiscuity in the nineteenth century; repressed sexuality in the twenty-first century) on the part of Muslim women.

The evidence from France suggests that we have to treat secularism not as an accurate description of institutions and policies, but as a polemical term whose meaning changes in the different contexts in which it is deployed.

[51] Emile Durkheim, *The Division of Labor in Society*, tr. George Simpson (New York: Free Press, 1964), p. 60.

[52] Joan W. Scott, "The Vexed Relationship of Emancipation and Equality," *History of the Present* 2/2 (2012): 148–68.

The question historians and others must ask is not what has secularism always meant, but what work does it do in historically specific circumstances, how does it organize our perception, with what effects and to what ends?

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4

Islamic Law and Muslim Women in Modern Indonesia

Robert W. Hefner

In recent years many Muslim-majority countries have undergone troubled and sometimes tragic political transitions. However varied the precise course of events, one feature of all of these transitions has been heightened debate over the place of women in public life, and the role of Shariʿa and Islamic ethical traditions in defining women's roles.

In this chapter, I examine the pervasiveness of Shariʿa appeals in today's transitions, in particular with regard to the Southeast Asian nation of Indonesia. My discussion begins with a few general reflections on Islamic ethics and law, building on recent anthropological and Muslim feminist approaches to both. Having presented this general framework, I turn in the second part of the chapter to examine Islamic ethico-legal traditions and gender realities in Indonesia. Indonesia is the largest Muslim-majority country in the world, and—notwithstanding some deeply disturbing incidents with regards to religious tolerance and women's rights[1]—it is the most open and vibrant of the Muslim world's democracies. No less intriguing with regard to this book's concerns, Indonesia also has one of the Muslim world's more influential Islamic women's movements.[2] After making legislative gains in the early

[1] Melissa Crouch, *Law and Religion in Indonesia: Conflict and the Courts in West Java* (London and New York: Routledge, 2014); Human Rights Watch (HRW), *In Religion's Name: Abuses against Religious Minorities in Indonesia* (New York: Human Rights Watch, 2013); International Crisis Group, "Indonesia: Implications of the Ahmadiyah Decree" (Jakarta and Brussels: Asia Briefing No. 78, 2008).

[2] Susan Blackburn, "Indonesian Women and Political Islam," *Journal of Southeast Asian Studies*, 39/1 (2008): 83–105, at 95; R. Rinaldo, *Mobilizing Piety: Islam and Feminism in Indonesia* (New York: Oxford University Press, 2013), pp. 1–31; Kathryn Robinson, *Gender, Islam and Democracy in Indonesia* (London and New York: Routledge, 2009), pp. 165–93; Susanne Schröter, "Gender and Islam in Southeast Asia: An Overview," in *Gender and Islam in Southeast Asia: Women's Rights Movements, Religious Resurgence and Local Traditions*, ed. Susanne Schröter (Leiden and Boston, MA: Brill, 2013), pp. 7–52.

years of the post-Soeharto Reformasi period (Ind., "reformation"; 1998–), the Islamic women's movement faced growing opposition from conservative Islamist groups, a few of whom backed up their opinions with militia vigilantism. In 2004, the Islamic women's movement failed in its effort to introduce far-reaching gender reforms into the codified body of Islamic personal status law used since 1991 in Indonesia's Islamic courts, and known as the Compilation of Islamic Law (Kompilasi Hukum Islam).[3]

That setback offers lessons on the peculiar political dynamics of Islamic ethico-legal traditions with regard to women's issues in Indonesia and beyond. In particular, it underscores a key theme in the analysis of Islamic ethico-legal traditions and gender politics: that, in our efforts to understand the varied meanings and performances of the former, we must attend *both* to the interpretations to which they are subject *and* to the social networks, administrations, and powers that "scale up" otherwise specialized exegeses into authoritative discursive forms.[4] As the editors of this volume emphasize in their Introduction, with the globalization of the nation-state as the instrument of modern macro-political organization par excellence, some of the most decisive scalings have to do with efforts by actors in state and society to ground *their* preferred ethical discourses in the policies and governance of the state.

ISLAMIC LAW AMONG A PLURALITY OF MORAL REGISTERS

To understand the politics of religious ethics and law in today's Muslim world, we must put aside the idea that Islamic legal traditions are a fixed and finished body of normative knowledge, derived from sacred texts in a singular and unchanging manner. Rather than viewing Islamic law and ethical ideals as unitary and finished, we come closer to their social reality when we recognize that they are always mediated through an array of state and societal authorities, popular and elite ethical imaginaries, and media of representation,

[3] Mark Cammack, "Indonesia's 1989 Religious Judicature Act: Islamization of Indonesia or Indonesianization of Islam?" *Indonesia* 63 (1997): 143–68; Tim Lindsey, *Islam, Law and the State in Southeast Asia*, vol. 1: *Indonesia* (London and New York: I.B. Tauris, 2012), pp. 69–101; Ahmad Imam Mawardi, "The Political Backdrop of the Enactment of the Compilation of Islamic Laws in Indonesia," in *Shari'a and Politics in Modern Indonesia*, ed. Arskal Salim and Azyumardi Azra (Singapore: Institute for Southeast Asian Studies, 2003), pp. 125–47.

[4] On the concept of scaling, see Peter Evans, "Government Action, Social Capital and Development: Reviewing the Evidence on Synergy," *World Development* 24/6 (1996): 1119–32, and Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton, NJ: Princeton University Press, 2000), p. 226 n.32.

transmission, and performance. Borrowing a phrase from Fredrik Barth's anthropology of knowledge, the interplay of these elements may bring about "criteria of validity" with sufficient internal consistency, social resonance, and public authority to allow a relatively stable understanding and practice of what are deemed Islamic ethico-legal traditions in a given time and place.[5] Precisely because understandings and practices of Islamic legal traditions emerge from this interplay, however, the specific corpus of assertions inspired by what is called Shari'a or Islamic law can vary, sometimes in highly contradictory ways. The fact that in today's world distinguished Muslim democrats cite the "higher aims" of the Shari'a (Ar., *maqasid al-shariah*)[6] to justify democracy, while totalitarian groups like the Islamic State in Iraq and Syria invoke Shari'a to condemn democracy and justify mass killing, is but one contemporary illustration of this fact.

While recognizing its situated and contingent nature, we must take care not to deconstruct Islamic law so thoroughly as to assume that it has always been infinitely variable from one setting to another. An abiding concern for public ethics and divine law has been central to Islamic civilization from the beginning. One of the great achievements of that tradition in its third to fifth centuries (10–12th c. CE) was to put in place institutions for the enduring study, production, and reproduction of the legal and ethical knowledge that came to be regarded as Islamic law. Until the great political transformations of the nineteenth and twentieth centuries, the institution at the center of this ethico-legal assembly was the *madrasa*, a boarding school for intermediate and advanced study in the Islamic sciences.[7] Madrasas varied, and in some times and places their curriculum included training in Islamic mysticism, mathematics, and astronomy, or even the Greek-influenced "sciences of the ancients," with their natural science and humanistic philosophy. In most pre-twentieth-century Muslim lands, however, the subject matter at the heart of madrasa curricula was *fiqh* or jurisprudence.

[5] Fredrik Barth, *Balinese Worlds* (Princeton, NJ: Princeton University Press, 1993), pp. 177–236.

[6] See Ebrahim Moosa, "The Poetics and Politics of Law after Empire: Reading Women's Rights in the Contestation of Law," *UCLA Journal of Islamic and Near Eastern Law* 1 (2001): 1–46; Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford and New York: Oxford University Press, 2009); Khaled Abou El Fadl, *Islam and the Challenge of Democracy*, ed. Joshua Cohen and Deborah Chasman (Princeton, NJ, and Oxford: Princeton University Press, 2004).

[7] See Jonathan Berkey, *The Transmission of Knowledge in Medieval Cairo: A Social History of Islamic Education* (Princeton, NJ: Princeton University Press, 1992); George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: University of Edinburgh Press, 1981); Robert W. Hefner, "Introduction: The Culture, Politics, and Future of Muslim Education," in *Schooling Islam: The Culture and Politics of Modern Muslim Education*, ed. Robert W. Hefner and Muhammad Qasim Zaman (Princeton, NJ: Princeton University Press, 2007), pp. 1–39.

Meaning, literally, "understanding," and referring to the efforts of religious scholars to understand God's commands, *fiqh* was the scholarly specialty most directly involved in the derivation of legal and ethical "rules" (Ar., *ahkam*) from Shariʿa. In the premodern period, *fiqh* was neither codified nor rendered as positive statutory law.[8] From the ninth century onward, there were different schools of Islamic jurisprudence (four major Sunni schools, and three Shiʿa), and each had a measure of "ijtihadic plurality"[9] that allowed scholars some leeway in legal interpretation. Notwithstanding this flexibility, the main currents of Muslim jurisprudence displayed striking continuity over time, at least until the great political and epistemological upheavals of the nineteenth and twentieth centuries.

Indeed, contemporary academic commentators on Islamic legal texts have been so deeply impressed by what is, from a comparative legal studies perspective, the textual tradition's richness, that a few have assumed that the *fiqh* tradition was the fount from which all Islamic ethical knowledge flowed. In so doing, these scholars have unwittingly reproduced a textualist and homogenizing bias in the study of Islamic law and ethics, overlooking the myriad ways in which these traditions coexisted with, and at times were even overridden by, other ethico-legal registers.

In trying to understand the scale and dynamics of this normative plurality, it is important to recognize, first of all, that in the pre-colonial and pre-nation-state period, the *fiqh* as a tradition of learning remained a specialized and elite-managed affair, one exclusively developed by male scholars. The great majority of Muslims in the premodern Middle East—indeed, by some estimates, upward of 98 percent of the population in North Africa and the Levant[10]—were functionally illiterate. As the celebrated historian of Muslim society, Ibn Khaldun (d. 1406), reminded us, across the vast expanse of the Middle East and North Africa one saw urban, multi-ethnic communities living alongside large peasant communities and powerful pastoralist tribes, each with its own customs, political hierarchy, and ethical cultures. Even where a community identified as Muslim and claimed allegiance to what it called Shariʿa, its members' understanding of the law bore the imprint of diverse moral registers, including deeply gendered tribal traditions of honor and shame.

In culturally diverse settings like these, Muslims from outside the ranks of the scholarly class were exposed to diverse ethical practices and socializations.

[8] See Colin Imber, *Ebu's Su'ud: The Islamic Legal Tradition* (Stanford, CA: Stanford University Press, 1997), p. 244; Knut S. Vikor, *Between God and the Sultan: A History of Islamic Law* (Oxford: Oxford University Press, 2005), pp. 207–9.

[9] The phrase is from Wael B. Hallaq, *Sharî'a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), p. 449.

[10] See Carter Vaughn Findley, "Knowledge and Education in the Modern Middle East: A Comparative View," in *The Modern Economic and Social History of the Middle East in Its World Context*, ed. Georges Sabagh (Cambridge: Cambridge University Press, 1989), pp. 130–54.

Learning encounters most explicitly identified as "Islamic" centered on, not the study of law, but daily prayer; state, calendrical, and life-cycle rituals; and the Sufi orders so influential in popular society.[11] The tension between a *fiqh*-based or legalistic ethics and popular Sufi normativity has at times been overstated in studies of Islamic ethical history. Nonetheless, and especially prior to the rise of the modern state and modern movements of Islamic reform, many popular varieties of Sufism took a decidedly eclectic approach to textual *fiqh*. These mystical groups were inspired by an equally religious but far less legalistic register, one related to extant traditions of shrine pilgrimage, saint veneration, and divine power.[12] As a result of these and other cultural engagements, non-scholars, even including rulers and certain popular religious leaders, brought significantly different epistemologies and aspirational projects to their moral understandings and actions. The plurality of ethical currents influenced how different actors understood Islamic Shariʿa, and how central they made the law in their ethical lives.

In the nineteenth and twentieth centuries, the state-supported legal systems in most Muslim-majority societies underwent unprecedented change. The most important feature of that change was a great narrowing of the jurisdictional scope and influence of Islamic legal traditions. Challenged by the European powers, Egyptian and Ottoman rulers concluded that they needed, not more Islamic law, but a centralized and state-authorized legal code similar to that of the Europeans.[13] Where European powers intervened directly in Muslim societies, the new rulers found the scope of Islamic legal traditions an obstacle to their imperial ambitions. In the aftermath of colonial rule, many Muslim-majority states extended these restrictive policies. In one of the boldest of state-mandated secularizations, in 1956 the Egyptian president, Gamal Abdel Nasser (1918–1970), did away with most of the country's Islamic legal institutions.[14] In other countries, ruling elites took similar measures, retaining only those elements of Islamic law concerned with domestic affairs

[11] For studies of the values at play in popular religious activities, see Jonathan Berkey, *The Formation of Islam* (Cambridge: Cambridge University Press, 2003); Paula Sanders, *Ritual, Politics, and the City in Fatimid Cairo* (Albany, NY: State University of New York Press, 1994); and Boaz Shoshan, *Popular Culture in Medieval Cairo* (Cambridge: Cambridge University Press, 1993), pp. 67–78.

[12] See Ahmet T. Karamustafa, *Sufism: The Formative Period* (Berkeley and Los Angeles, CA: University of California Press, 2007); Frederick De Jong and Bernd Radtke, eds., *Islamic Mysticism Contested: Thirteen Centuries of Controversies and Polemics* (Leiden and Boston, MA: Brill, 2013).

[13] Vikor, *Between God,* 230.

[14] Nathan Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge: Cambridge University Press, 1997), p. 85; Clark B. Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the* Sharîʿa *into Egyptian Constitutional Law* (Leiden: Brill, 2006), pp. 110–16.

(marriage, divorce, inheritance) and such specialized religious matters as pious endowments (Ar. *awqaf*).

The nationalist heyday was not the end, however, of the Shariʿa story. In the 1970s and 1980s, Muslim lands witnessed the emergence of new social movements calling for the state to implement what its proponents called Shariʿa. The Islamic awakening had multiple motives and ideological orientations. But some among its enthusiasts were convinced that the only guarantee of justice and an end to tyranny was state implementation of Shariʿa. It is important to recognize that the "Shariʿa" promoted by these movements—enacted by state legislatures, codified as positive statutes, and enforced by modern state administrations—was unlike any previously seen in Islamic history. In their classical form, Islamic legal traditions were neither codified nor the exclusive preserve of the state; they were "placed *between* state and civil society."[15] As Sami Zubaida has remarked, the étatization and codification of Islamic legal traditions amounted to nothing less than a "triumph of European models" over classical Islamic legal traditions.[16]

In the face of Islamist demands for greater conformity to ostensibly divine regulations, many proponents of received, localized, or otherwise ordinary varieties of Islam, including customary gender norms long regarded as Islamic, found themselves unable to legitimate their traditions in religiously authoritative terms. "Repertoires of public reasoning"[17] once sufficient to defend local practices as Islamic lost their credibility in the face of state authorities and well-organized movements that pressed for what they claimed was a more authentic profession of Islam. However, the contest over the forms and meanings of Islamic law and ethics did not end there. Although many activists insisted that Shariʿa is singular, straightforward, and easily understood, the very force with which activists promoted their ideas unleashed fierce debates over just what Islamic law and ethics are and who has the right to decide their meanings.

Over time, and in the most diverse social settings, this ethico-legal contention has come to center on several key questions. Who has the right to define Islamic ethics and legal traditions?[18] By what method and authorities are these

[15] Vikor, *Between God,* 254.

[16] Sami Zubaida, *Law and Power in the Muslim World* (London: I.B. Tauris, 2003), p. 135; see also Aharon Layish, "The Transformation of the Sharîʿa from Jurists' Law to Statutory Law in the Contemporary Muslim World," *Die Welt des Islams* 44/1 (2004): 85–113.

[17] On repertoires of public reasoning, see John R. Bowen, *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003).

[18] For examples of such public challenges, see Zainah Anwar, "What Islam, Whose Islam? Sisters in Islam and the Struggle for Women's Rights," in *The Politics of Multiculturalism: Pluralism and Citizenship in Malaysia, Singapore, and Indonesia*, ed. Robert W. Hefner (Honolulu, HI: University of Hawaii Press), pp. 227–52; John L. Esposito and Dalia Mogahed, *Who Speaks for Islam? What a Billion Muslims Really Think* (New York: Gallup Press, 2007).

traditions to be enforced? And last but not least, are Shari'a regulations *really* simple, positive, law-like, and finished in their form? Or, as Tariq Ramadan, Mohammad Hashim Kamali, and Muhammad Khalid Masud assert, referencing Abu Ishaq al-Shatibi's (d. 1388) scholarship; or as Muslim feminists like Kecia Ali and Ziba Mir-Hosseini have also argued, does a proper derivation of Shari'a norms require a holistic determination of the "spirit of God's law" or the law's "higher aims" (*maqasid al-shari'a*)?[19] These potent questions remind us that, rather than reducing the ethical diversity of the contemporary Muslim world, movements for the "Islamization" of state and society have only deepened it.

Today, the struggle over Islamic ethics and law rages no more fiercely than with regard to the rights and standing of Muslim women. The reasons for this are familiar enough. Although they offered few precise details on how the state should be organized, classical jurists had much to say about women and the family. Legal scholars (*fuqaha*) touched most extensively on issues of concern to women in matters of family law, especially as regards marriage, divorce, property, and inheritance. Scholars also provided rulings on affairs beyond the home, including women's testimony in court and their participation in public life. In all these spheres, classical *fiqh* reached less-than-equitable conclusions with regard to women.[20]

In actual practice, however, Islamic traditions could appear more plural than these textualist treatments imply. Drawing on normative registers more varied than the letter of the law alone, judges in Islamic courts sometimes ruled in ways more favorable to women than the text of the law specified. Indeed, recent ethnographic studies have shown that court rulings on matters of gender and family are often still today informed by gender registers more equitable than the principles affirmed in textual *fiqh*.[21] However, as Kecia Ali has shown in her study of marriage and slavery in classical *fiqh*, the co-imbrication of ethical registers could go in a contrary direction as well:

[19] Ramadan, *Radical Reform*; Mohammad Hasim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld, 2008); Muhammad Khalid Masud, *Shâtibî's Philosophy of Islamic Law* (Kuala Lumpur: Islamic Book Trust, 2005); Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (Oxford: One World, 2006); and Ziba Mir-Hosseini, "The Construction of Gender in Islamic Legal Thought and Strategies for Reform," *Hawwa: Journal of Women of the Middle East and the Islamic World* 1/1 (2003): 1–28, and "Towards Gender Equality: Muslim Family Laws and the Shari'ah," in *Wanted: Equality and Justice in the Muslim Family*, ed. Zainah Anwar (Petaling Jaya, Malaysia: Musawah, 2012), pp. 22–63.

[20] See Judith Tucker, *Women, Family, and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008), pp. 25–7.

[21] For examples, see Michael G. Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* (Princeton, NJ: Princeton University Press, 2002), pp. 84–97; Susan Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago: University of Chicago Press, 1998); Judith Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley and Los Angeles, CA: University of California Press, 1998).

locally embedded patriarchies could shape rulings deeply contrary to what a holistic reading of scripture might otherwise imply.[22]

It is contentions like these that give such urgency to the questions at the heart of this chapter. What social and ethical imbrications might favor the emergence of gender-equitable understandings of Islamic ethico-legal traditions? On these points, the example of modern Indonesia offers several striking lessons.

ISLAM AND ETHICAL PLURALITY IN INDONESIA

Muslim Southeast Asia offers a powerful example of just how Islamic ethical and legal traditions can vary across time and space. The variation reflects the authorities and media through which Muslim ethical knowledge is produced, reproduced, and scaled up in state and society, and through which that knowledge co-imbricates with other ethical imaginaries and aspirational projects, including but not limited to those that involve the state.

The co-imbrications at work in premodern Indonesia were significantly different from those in the premodern Arab Middle East. Although Arab Muslim traders had sailed through the Indonesian archipelago as early as the late seventh century, the first mass conversion to Islam only began six centuries later. Rather than armies of horse-mounted warriors sweeping in from across the steppe, the primary vector for conversion to Islam in this region was the Muslim-dominated Indian Ocean trade, linking southern Arabia and India with the Indonesian archipelago and southern China. As the trade reached its apogee from the fifteenth to seventeenth centuries, Islam spread to most (but not all) coastal and interior kingdoms in the central and western archipelago, displacing once-dominant Hindu–Buddhist kingdoms.[23]

Although military conflicts broke out in the course of conversion, the broader process was relatively peaceful. No less important, Islamization's primary promoters were not ethnically foreign, but local rulers who shared language, culture, and gender norms with the subjects they brought to the new faith. The elite-mediated and co-ethnic nature of the Islamization process meant that, until the rise of Middle Eastern-influenced movements of Islamic reform in the nineteenth and twentieth centuries, there was considerable cultural continuity from the old religion to the new, including in matters of

[22] Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge, MA: Harvard University Press, 2010).

[23] Anthony Reid, *Southeast Asia in the Age of Commerce, 1450–1680*, vol. 2: *Expansion and Crisis* (New Haven, CT: Yale University Press, 1993), pp. 3–12; M. C. Ricklefs, *Polarising Javanese Society: Islamic and Other Visions (c. 1830–1930)*. (Honolulu, HI: University of Hawaii Press, 2007).

kinship and gender. Court arts of broadly Indic nature, including shadow theater and Indian-influenced dance traditions in which bare shoulders and tight bodices were the female norm, remained widespread across the central kingdoms until well into the twentieth century.

Muslim Southeast Asia *did* have transregional networks conveying a normative vision closer to that of the Muslim Middle East.[24] However, one institution so important to the Middle Eastern landscape was notable by its absence: the madrasa. As noted earlier, the madrasa is a boarding school for intermediate and advanced study in the Islamic sciences in general, and *fiqh* in particular. By the twelfth century CE, the madrasa had become "perhaps the most characteristic religious institution of the medieval Near Eastern urban landscape."[25] Little of the madrasa's ethical assemblage was put in place in premodern Southeast Asia. As a result, prior to the twentieth century, *fiqh* had a limited place in local ethical registers. Certainly, Muslim Southeast Asia had its share of Islamic study circles and boarding residences where young men (and, more rarely, young women) came together to study Islamic traditions. However, these institutions dedicated their pedagogical energies to Qur'an memorization, Prophetic biographies, *tasawwuf* spirituality, and moral edification of a non-jurisprudential sort. As a result, Islamic moral registers had much less to do with scholarly *fiqh* than they did with lessons from the life of the Prophet and a Sufi-informed concern with moving closer to God under the guidance of some miracle-working saint.

For the purposes of this volume, the most significant consequence of Southeast Asia's non-*fiqh* normativity had to do with women. Many of the gendered categories and presuppositions of *fiqh* discourse in Middle East lands were absent or only partially recognized in Muslim Southeast Asia, at least until the rise of Islamic reform in the late nineteenth century; even then they remained significantly quarantined until well into the twentieth century. Although some women wore loose-fitting headscarves, the hijab was rare.[26] With the exception of a few aristocrats, female seclusion was unknown.[27] Women were the dominant actors in local markets; men predominated only in long-distance trade. In daily life, women were free to move about villages and towns unescorted. Divorce for women (at least prior to bearing children)

[24] For examples, see Azyumardi Azra, "The Transmission of Islamic Reformism to Indonesia: Networks of Middle Eastern and Malay Indonesian Ulama in the Seventeenth and Eighteenth Centuries" (PhD Dissertation, Department of History, Columbia University, 1992); Ronit Ricci, *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago: University of Chicago Press, 2011), pp. 262–7.

[25] Berkey, *The Formation*, p. 187.

[26] See Nancy J. Smith-Hefner, "Javanese Women and the Veil in Post-Soeharto Indonesia," *Journal of Asian Studies* 66/2 (2007): 389–420.

[27] Barbara Watson Andaya, *The Flaming Womb: Repositioning Women in Early Modern Southeast Asia* (Honolulu, HI: University of Hawaii Press, 2006).

entailed little stigma. In some parts of Southeast Asia, including among groups like south Sulawesi's Bugis (known for their strong self-identification as Muslim), local sexual cultures acknowledged the reality of a third sex and transgenderism.[28] Most revealing of all with regard to the limited influence of classical *fiqh* in local gender registers, most Muslim-majority communities ignored the law's rules on succession stipulating that a daughter's share in inheritance should be half her brother's. In much of the region, daughters' and sons' shares were treated as equal. In these and other regards, Muslim Southeast Asia maintained an Islamic ethical register that, on matters of gender, was strikingly different from the Arab Middle East.

A NEW REFORM

It goes without saying that Southeast Asian Islam was never an island unto itself, and in the late nineteenth century a growing interaction with centers of pilgrimage and learning in the Middle East brought about a heightened exposure to *fiqh*-based normativity. From the middle decades of the nineteenth century onward, the Indonesian and Malaysian equivalent of the Middle Eastern madrasa, known as a *pondok* or *pesantren*, became a prominent feature of the social landscape and a major influence on Muslim ethical imaginaries.[29] In the last years of the nineteenth century, the rapid establishment of *pesantren* across central and western portions of the Indonesian archipelago insured that a well-organized if at first minority wing of the Muslim community developed a lettered familiarity with *fiqh*. By the first decades of the twentieth century, this development had converged with anti-colonial ferment to spur the rise of organized movements for the implementation of Shariʿa. The growing influence of *fiqh*-derived normativity in *pesantren*-linked circles led to appeals for a Shariʿa-inspired reconfiguration of rules with regards to women's dress, divorce, and inheritance.

This was but the beginning of more than a century of public-ethical contention in Indonesia, in which questions of gender and nation have figured

[28] See Sharyn Graham Davies, *Gender Diversity in Indonesia: Sexuality, Islam and Queer Selves* (London and New York: Routledge, 2010); Michael G. Peletz, *Gender Pluralism: Southeast Asia since Early Modern Times* (London and New York: Routledge, 2009).

[29] See Zamakhsyari Dhofier, *The Pesantren Tradition: The Role of the Kyai in the Maintenance of Traditional Islam in Java* (Tempe, AZ: Monograph Series, Program for Southeast Asian Studies, Arizona State University, 1999); Azyumardi Azra, Dina Afrianty, and Robert W. Hefner, "Pesantren and Madrasa: Muslim Schools and National Ideals in Indonesia," in *Schooling Islam: The Culture and Politics of Modern Muslim Education*, ed. Robert W. Hefner and Muhammad Qasim Zaman (Princeton, NJ: Princeton University Press, 2007), pp. 172–98; Martin van Bruinessen, "Shariʿa Court, Tarekat and Pesantren: Religious Institutions in the Banten Sultanate," *Archipel* 50 (1995): 165–200; Ricklefs, *Polarising*, pp. 52–72.

prominently. Although, during the middle decades of the twentieth century, Indonesia developed a sizable nationalist movement of a broadly "secularist" nature, some of the most important ethical contentions had to do, not with contests between Muslims and non- or nominally Muslim secularists, but with opposing *Muslim* understandings of Islamic legal and ethical traditions. In particular, no sooner had the new, *fiqh*-informed normativity become a point of ethical orientation for some *pesantren*-based Muslims than, for other observant Muslims, the hope for a more authentic profession of the faith imbricated with aspirational projects less exclusively grounded on *fiqh*.

Two developments contributed to this unusual and rapid permutation of Islamic ethical registers. First, not long after the network of *pesantren* boarding schools had been put in place and the conditions were created for what might have appeared to be a new *fiqh* hegemony, the movement of Islamic reform known in Indonesia as Islamic "modernism" (Ind., *kaum modernis*) arose in urban areas across the region.[30] Faced with the challenge of European colonialism, modernists like those in the Muhammadiyah (established in Yogyakarta, Java, in 1912)[31] concluded that the most effective educational instrument for the improvement of the Muslim community was, not the *pesantren* with its *fiqh*-centered curriculum, but the "Islamic day school" (Ind., *sekolah Islam*). With its classrooms, blackboards, and mix of general and religious instruction, the latter institution was modeled on Protestant and, especially, Catholic schools; the latter had been introduced by European missionaries in the early years of the twentieth century.

Although Indonesia's modernists publicly affirmed the importance of Shariʿa, they differed from their traditionalist rivals in insisting that proper understanding of the law required believers to put aside medieval *fiqh* and return to the Qur'an and Sunna for legal rulings. The Muhammadiyah's founder, Ahmad Dahlan (1868–1923), had studied in Mecca and there developed an interest in reformist ideas, including those of the well-known Egyptian modernist, Muhammad ʿAbduh (1849–1905). Like ʿAbduh, Dahlan and his followers stressed the importance of *ijtihad* (lit., independent "striving"; but here, the effort by religious scholars to infer the rules of Islamic law) over pious conformity (*taqlid*) to classical jurisprudence. The Muhammadiyah leadership also insisted that, in modern times, the most effective way to

[30] See Taufik Abdullah, *Schools and Politics: The Kaum Muda Movement in West Sumatra (1927–1933)* (Ithaca, NY: Modern Indonesia Project, SEAP, Cornell University, 1971), and D. Noer, *The Modernist Muslim Movement in Indonesia, 1900–1942* (Kuala Lumpur: Oxford University Press, 1993).

[31] See Alfian, *Muhammadiyah: The Political Behavior of a Muslim Modernist Organization under Dutch Colonialism* (Yogyakarta: Gadjah Mada Press, 1989); and Mitsuo Nakamura, *The Crescent Arises over the Banyan Tree: A Study of the Muhammadiyah Movement in a Central Javanese Town, c. 1910s–2010*, 2nd enlarged edn. (Singapore: ISEAS Press, 2012), pp. 51–77.

perform *ijtihad* was collectively (*ijtihad jama'i*), so as to ensure judgments drew on a balanced array of scholarly and practical expertise.[32]

It is important *not* to view Muhammadiyah initiatives with regard to education and legal traditions as mere technical matters. They were in fact key ingredients in a broader although not yet fully articulate effort to develop a new Islamic ethical register, one capable of guiding a new kind of moral action in a new kind of world. The reformists' understanding of the place of Islamic legal traditions in politics and gender life were to have significant implications for public debates over women and Islam in Indonesia in decades to come.

NATIONALISM AND MUSLIM WOMEN'S ACTIVISM

One historical fact stands out in any assessment of Muslim women and the nationalist movement in Indonesia: that, as in the Arab Middle East, the aspiration for a new and more equitable arrangement for women originated, not in the aftermath of the national awakening, but with its very inception.[33] The first movements for Indonesian national awakening arose in the 1910s. By the end of the decade, and fueled by growing anti-colonial resentment, the new movements had mobilized hundreds of thousands of followers across the central archipelago. Groups like the Association of Muslim Merchants (Sarekat Dagang Islam, est. 1911) and its larger and more radical successor, the Islamic Association (Sarekat Islam, est. 1918), were among the first movements to develop a mass base.[34] The latter movement quickly split along ideological lines, however, with those committed to a socialist or Marxist vision of nationhood separating from Muslim nationalists. This contest between Muslim nationalists committed to some version of Islamic law and nationalists (including many Muslims) of a broadly "secular" or "multiconfessional" orientation was to remain one of the defining divides of Indonesian politics for the rest of the twentieth century.[35] At its heart, too, lay debates over the rights and standing of women.

[32] Fathurrahman Djamil, "The Muhammadiyah and the Theory of Maqasid al-Shari'ah," *Studia Islamika* 2/1 (1995): 53–67, p. 59 citation.

[33] See Margot Badran, *Feminism in Islam: Secular and Religious Convergences* (Oxford: One World, 2009); Robinson, *Gender*, p. 34.

[34] See Ricklefs, *Polarising*; Takashi Shiraishi, *An Age in Motion: Popular Radicalism in Java, 1912–1926* (Ithaca, NY, and London: Cornell University Press, 1990).

[35] Scholars of Indonesian politics have long hesitated to describe the non-Islamist wing of the nationalist movement as "secular" or "secular nationalist." Statistically speaking, the majority of these nationalists were of Muslim background. Most "secular" nationalists have also long agreed on the importance of allowing religion in public life. Hence, many Indonesianists prefer to call these actors "multiconfessional" rather than "secular" nationalists. See Noer, *The Modernist.*

During these early years, education, colonial subjection, and new emancipatory aspirations combined to give rise to the "consciousness of the political category of 'woman'."[36] Here again, rather than standing in polar opposition, Islamic and secularly oriented women's movements agreed on many issues, not least those related to women's education and family welfare. However, on the question of whether the state should be used to reform private family life, the two groups parted ways. Although in 1930 a splinter group in the Muslim wing of the women's movement briefly joined with its secular nationalist counterparts in calling for reform to religious laws on marriage, divorce, polygyny, and inheritance, most Muslim women's groups rejected such proposals.[37] However, the ethical imbrications in play here were more complicated than first meets the eye, as illustrated once again in the experience of the Muhammadiyah.

Muhammadiyah's founder, Ahmad Dahlan, established a women's section shortly after the organization's founding, the leadership of which he gave to his wife. The section's initial aim was to make *da'wa* appeals to women, promoting a more pious profession of the faith. In 1917, the department's name was changed to Aisyiyah. In the 1920s, the women's wing expanded its range of activities to include women's education and family health. However, Aisyiyah steered clear of calls for reforms to marriage laws. Indeed, Aisyiyah's public pronouncements on marriage made clear its two priorities with regard to gender ethics: first, that a woman's primary place lies in the home and with child-rearing; and second, that Muslim women cannot join with secular nationalists in any campaign to ban polygyny or rewrite laws on marriage and divorce.[38]

Public statements aside, there were signs of deep ethical tensions within Aisyiyah on just these questions. The feminist writer, Saskia Wieringa, reports that, although Aisyiyah leaders refused to join in anti-polygyny campaigns "because the Qur'an accepted it, in private leaders were often unhappy about this."[39] One elderly Aisyiyah leader recalled in an interview with Wieringa that, "Personally I have never agreed with polygyny. I would never have allowed it. But it is a religious rule, so what can we say against it?" The point here is that, whether in the 1920s or later, most Aisyiyah women and some Muhammadiyah men recognized that Islamic legal traditions allowed polygyny, but many activists invoked other gender registers to qualify the rule's application. In this, as in so many other examples, a discursivized religious rule (polygyny's

[36] Robinson, *Gender*, p. 34. [37] Blackburn, "Indonesian Women," 87–8.
[38] Saskia Wieringa, *Sexual Politics in Indonesia* (New York: Palgrave Macmillan, 2002), pp. 67, 124; Kathryn Robinson, "Islamic Cosmopolitics, Human Rights and Anti-Violence Strategies in Indonesia," in *Anthropology and the New Cosmopolitanism: Rooted, Feminist and Vernacular Perspectives*, ed. Pnina Werbner (Oxford and New York: Berg, 2008), pp. 111–33.
[39] Wieringa, *Sexual Politics*, p. 67.

legality according to divine law) is rethought in the light of a less formally discursivized but widely held moral register. However, the fact that gender reformists in groups like the Muhammadiyah were unable to perform the normative work and scaling required to take these ethical views one step further by promoting a new *fiqh* consensus on polygyny meant that this largely tacit consensus would remain vulnerable to later challenge.

During the middle decades of the twentieth century, the reform of family law took a backseat to a growing and ultimately catastrophic dispute over the place of religion in the new nation. During the 1950s and 1960s, calls again grew for a more extensive implementation of what its proponents called Shariʿa. Party competition pitted Muslims committed to the establishment of an Islamic state against parties of the secular left, including most notably the Indonesian Nationalist Party (PNI) and the Indonesian Communist Party (PKI). By the early 1960s, Indonesia was the second most populous Muslim-majority country in the world (after greater Pakistan's break up in 1971, Indonesia would be the most populous). The world's two largest Muslim social welfare associations, the Muhammadiyah and Nahdlatul Ulama (NU), also emerged in Indonesia. By this same period, however, Indonesia had an even more unusual claim to fame: it was home to the largest communist party outside of the communist bloc.[40]

During these years, the Communist Party's women's organization, known by its acronym as Gerwani (Gerakan Wanita Indonesia, Indonesian Woman's Movement), grew steadily larger than its Muslim rivals; in the early 1960s, it was estimated to have 4 million members. Ironically, however, as the PKI grew and the Muslim-communist rivalry intensified, Gerwani's commitment to women's issues slackened. In the 1950s, Gerwani had aligned itself with non-communist nationalists to oppose child marriage and polygyny; it had also called for legislation that would restrict a husband's right to unilateral divorce. However, "opposition to polygyny brought Gerwani into conflict with the male PKI leadership, many of whom were polygamous."[41] The same opposition also affected Gerwani's relationship with President Sukarno, who by this time was *marxisant*–socialist in orientation. In 1954, the president offended many women in his own party by taking a second wife, over the very public objections of his first wife. During these same years, the president publicly dismissed feminism as divisive, insisting that socialist revolution was the only way to do away with gender inequalities. For these and other reasons, any hope of reforming Indonesian marriage laws faded.

The escalating conflict between Muslim and communist organizations took a violent turn in the aftermath of an attempted left-wing officers' coup, which

[40] On the PKI's rise, see Rex Mortimer, *Indonesian Communism under Sukarno: Ideology and Politics, 1959–1965* (Ithaca, NY: Cornell University Press, 1974).

[41] Robinson, *Gender*, p. 56; see also Wieringa, *Sexual Politics*, p. 238.

seems to have had the backing of some in the communist leadership, on the night of September 30, 1965. The coup collapsed in just a few days, but it set in motion a much larger and more violent countercoup.[42] Over the weeks that followed, anti-communist army generals purged their ranks of communist sympathizers, mounted a propaganda campaign against the communist leadership, and set out, with civilian vigilantes, to round up and execute communist activists. The largest civilian militias on whom army officials relied were those associated with the NU and Muhammadiyah. By the time the killing was over, some 500,000 communists had perished, and tens of thousands more had been imprisoned.[43]

Drawing on fabricated reports that elite communist women had played a role in the torture and killing of six army generals on the first night of the coup attempt, the new regime demonized the Gerwani and other left-wing women's groups. Over the next few years, the New Order regime put in place an authoritarian gender ideology that defined a woman's place as in the home and as subordinate to her husband. The regime justified the gender ideology with reference to *kodrat*—or (in the Indonesian understanding of this Arabic-derived term) women's "biological" nature.[44] This conservative gender register was supposed to serve as a hegemonic ideological referent for the entire New Order. But the register was to prove incapable of containing the complex changes in women's roles and self-understandings set in motion, ironically enough, by the New Order's developmental programs.

MUSLIM FEMINISM REBORN

Notwithstanding these earlier setbacks, a generation after these regime assaults on women's activism, Indonesia had developed one of the world's largest Muslim feminist movements as well as the world's largest Muslim-dominated pro-democracy movement. Needless to say, there was no sweeping Muslim democrat triumph. Indonesia had always had, and still has, a variety of radical Islamist groupings, the largest of which campaign in support of an étatized and harsh variety of Islamic law.[45] Notwithstanding the complexity of the

[42] Robert Cribb, *The Indonesia Killings, 1965–1966: Studies from Java and Bali*. Monash Papers on Southeast Asia, No. 21 (Clayton, Victoria: Centre of Southeast Asian Studies, Monash University, 1990).

[43] For a contemporary re-analysis of the anti-communist killings, see John Roosa, *Pretext for Mass Murder: The September 30th Movement and Suharto's Coup D'état in Indonesia* (Madison, WI: University of Wisconsin Press, 2006).

[44] On *kodrat* and gender ideology in New Order Indonesia, see Suzanne Brenner, "Private Moralities in the Public Sphere: Democratization, Islam, and Gender in Indonesia," *American Anthropologist* 113/3 (2011): 478–90; Wieringa, *Sexual Politics*, p. 22.

[45] See Tim Lindsey and Jeremy Kingsley, "Talking in Code: Legal Islamisation in Indonesia and the MMI Shari'a Criminal Code," in *The Law Applied: Contextualizing the Islamic Shari'a*,

Muslim political scene, however, a new Muslim women's movement emerged. No less remarkable, far more than was the case for first-generation women's activists in the 1920s and 1930s, the new generation took aim squarely at the reformation of Islamic ethico-legal traditions on matters relevant to women and the family.

What circumstances made this dramatic course of events possible? A key influence on the new Muslim women's movement had to do with broad changes in education, gender, and social class unleashed by New Order development programs. Between 1965 and 1990, the percentage of literate Indonesians jumped from 40 percent to 90 percent of the total population. The increase in the percentage of people completing senior high school in the same period was equally dramatic, rising from approximately 4 percent in 1970 to over 30 percent. There was also a steady growth in private and public Islamic schooling, which today educates about 15 percent of the student population. No less remarkably, by the late 1990s, the proportion of young women comprising the madrasa student body had grown to over one-half of the total enrollment.[46] Young women's enrollment in the country's prestigious state Islamic University system (known by the acronym, UIN-IAIN) at first lagged behind that in higher education generally. In the early 1980s, women made up about 30 percent of the student body at these colleges and universities; by the 2000s, however, they were just under a half.

The 1980s and 1990s also witnessed an unprecedented Islamic revival (Ind., *kebangkitan*), a key portion of which involved conservative activists' promotion of what they regarded as greater Shari'a compliance in matters of gender. Some among the newer normative currents had roots in transnational Islamist movements, especially the Muslim Brotherhood. Brotherhood ideas were particularly popular among Indonesian students returning from study in Egypt, Syria, and Saudi Arabia in the 1980s and 1990s. Referred to in Indonesia as the *tarbiyah* ("cultivation," "education") movement, the Brotherhood-influenced wing of the revival went on, in the 2000s, to develop the most successful of the new Islamist parties, known today as the Prosperous Justice Party (PKS). The party has consistently secured 7 percent of the vote in national elections, although its long-awaited breakout beyond that figure has not materialized.[47]

ed. Peri Bearman, Wolfhart Heirichs, and Bernard G. Weiss (London and New York: I.B. Tauris, 2008), pp. 295–320; Masdar Hilmy, *Islamism and Democracy in Indonesia: Piety and Pragmatism* (Singapore: ISEAS Press, 2010), pp. 99–134; M. B. Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: Institute of Southeast Asian Studies, 2008), pp. 277–81.

[46] Fuad Jabali, and Jamhari, eds., *IAIN and Modernisasi Islam di Indonesia* [The State Islamic Institutes and the Modernization of Islam in Indonesia] (Jakarta: Logos Wacana Ilmu, 2002), pp. 68–9.

[47] On the origins and growth of Muslim Brotherhood-influenced movements in Indonesia, see Anthony Bubalo, Greg Fealy, and Whit Mason, *Zealous Democrats: Islamism and Democracy*

Although the *tarbiyah* movement has been supportive of women's education and participation in parliamentary politics, its transnational ties have made many among the membership *less* inclined to ground their normative imaginaries on Indonesia's own Islamic ethical legacies. Indeed, the party's conservative wing has at times seemed to deny that Indonesia has any legitimately Islamic normative legacies at all. In its first years, PKS activists claimed that "Islamic shari'a entails a set of values and laws that must be implemented in daily life."[48] They interpreted Islamic legal traditions as stipulating that a woman's primary role lies in the home raising children, and as precluding women's leadership in mixed-gender groupings.

However, there were other transnational influences at work in late and post-Soeharto Indonesia as well. From the late 1980s on, a new and theologically savvy generation of Muslim feminists arrived on the national scene. As in much of the Muslim world,[49] the social profile of the new Muslim feminism differed from that of the first generation of women activists in the 1920s and 1930s. The latter had emerged in the context of the anti-colonial struggle and was tied to mass-based social activism. As with the PKI's Gerwani or the Muhammadiyah's Aisyiyah, however, the interests of these women's organizations were often subordinated to those of a male-led, mass organization. No less important was the fact that, although some Muslim women activists expressed personal reservations about Islamic rules on polygyny or divorce, most lacked the legal training to publicly challenge these rules on scholarly grounds.

This was the critical difference with the Muslim feminists of the 1990s. The latter had both the training and the interest in taking on gendered aspects of Islamic legal traditions. Many of the second-generation activists had personal ties to mass-based Muslim organizations. But the critical spark for the new Muslim feminism did not *originate* in these mainline organizations. The main pathway to the new Muslim feminism was by way of small study circles and non-governmental organizations (NGOs) engaged with new international currents of Islamic feminist thought, and preoccupied with formulating a scripturally defensible reform of Islamic law and ethics on matters related to women.

in Egypt, Indonesia, and Turkey (Double Bay, Australia: Lowy Institute for International Policy, 2008), pp. 49–74; Kikue Hamayotsu, "The End of Political Islam? A Comparative Analysis of Religious Parties in the Muslim Democracy of Indonesia," *Journal of Current Southeast Asian Affairs* 30/3 (2011): 133–59; Yon Machmudi, "Islamizing Indonesia: The Rise of Jemaah Tarbiyah and the Prosperous Justice Party (PKS)" (PhD Dissertation, Faculty of Asian Studies, Australian National University, 2006).

[48] Lanny Octavia, "Islamism and Democracy: A Gender Analysis on PKS's Application of Democratic Principles and Values," *Al-Jami'ah* 50/1 (2012): 1–21.

[49] See, for example, Badran, *Feminism*; Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton, NJ: Princeton University Press, 1999).

The fact that second-generation Muslim feminism emerged from study circles and NGOs preoccupied with questions of Islamic normativity is, of course, not unique to Indonesia. The situation was similar in much of the Arab Middle East and in nearby Malaysia.[50] What was distinctive about Indonesia's Muslim feminists was that so many of them emerged from institutions of higher Islamic learning supported by the very same New Order state that had promoted conservative models of female domesticity. As the Muhammadiyah feminist scholar, Siti Syamsiyatun, has observed, the state Islamic educational system (UIN-IAIN) "has become a major source for women's religious empowerment."[51] Indeed, in the 1990s, the ranks of both Muslim and secular feminist organizations were disproportionately filled by graduates from the UIN-IAIN.[52]

These educational trends were complemented by important shifts in the country's two main mass-based organizations—adding to the hope that some of the normative work done by the new Muslim feminists might be scaled up into national legislation. In the 1980s, the NU had come under the leadership of Abdurrahman Wahid, the charismatic grandson of one of early twentieth-century Indonesia's most distinguished traditionalist scholars. In the mid-1990s, Wahid had become a leader in the growing democracy movement. Seventeen months after Soeharto's overthrow, in October 1999, Wahid was elected president. Wahid was a well-known supporter of women's rights, and his wife, Sinta Nuriyah Abdurrahman, was a Muslim feminist in her own right; Sinta Nuriyah played a pivotal role in a campaign to introduce anti-violence and gender-equity programs into the Islamic boarding school (*pesantren*) curriculum.[53] A network of NU-linked NGOs was also active in the development of a gender-equitable *fiqh*, which drew on jurisprudential traditions to provide critical arguments in support of reproductive rights and gender equality.

Despite these impressive gains, the gender-reform coalition of which many Indonesians had dreamed ultimately faltered. After Wahid's departure from the organization in 1999, the new NU leadership—pressed by conservative scholars in the provinces—hesitated to push forward with programs of gender "mainstreaming." The NU has always been a complex federation of

[50] See Anwar, "What Islam?"; Stephanie Latte Abdallah, "Introduction: Féminismes Islamique," *Revue des mondes musulmans et de la Méditerranéee* 128 (2010): 13–31.

[51] Siti Syamsiyatun, "Women Negotiating Feminism and Islamism: The Experience of Nasyiatul Aisyiyah, 1985–2005," in Susan Blackburn, Bianca J. Smith, and Siti Syamsiyatun, eds., *Indonesian Islam in a New Era: How Women Negotiate their Muslim Identities* (Clayton, Victoria: Monash University Press, 2008), pp. 139–65, 144.

[52] See Rinaldo, *Mobilising*; Robinson, *Gender*.

[53] See Nelly van Doorn-Harder, "Reconsidering Authority: Indonesian Fiqh Texts about Women," in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, ed. R. Michael Feener and Mark E. Cammack (Cambridge, MA: Harvard University Press, 2007), pp. 27–43, p. 37 citation.

pesantren-based *ulama*, and even in the heyday of the democracy movement in the 1990s a significant wing of the organization had been skeptical of reformist efforts with regards to gender. From 2001 onward, an anti-reform faction in NU organized a successful campaign to take the national organization in a more conservative, albeit not at all extreme, direction.[54]

The situation within Indonesia's other mass-based Muslim organization, the Muhammadiyah, showed a similar pattern of gender and pluralist progressivism on the part of the leadership in the 1990s, followed by provincial pushback in the 2000s. From 1995 to 1998, the Muhammadiyah had been under the leadership of Amien Rais (b. 1944), an outspoken critic of the Soeharto regime who played a pivotal role in the 1997–8 democracy movement. Although he was (and is still today) seen as mildly conservative on matters of Muslim–Christian relations, Rais oversaw the appointment of outspoken theological reformists to Muhammadiyah's Majlis Tarjih, in alliance with such leading democratic pluralists as Syafii Maarif and Amin Abdullah. Most remarkable was the appointment of a leading Muhammadiyah feminist, Siti Ruhaini Dzuhayatin, to the Tarjih council.[55] Over the next few years, she and Amin Abdullah were unceasing in their efforts to encourage the Muhammadiyah to develop gender-equitable policies, and to support efforts to rewrite the Compilation of Law used in Indonesia's Islamic courts.

As with the NU, however, the freewheeling atmosphere of the early Reformasi era soon gave rise to an anti-reformist backlash. The first hints of this turmoil became visible in the Muhammadiyah in the early 2000s, when regional branches signaled their unhappiness with the national leadership's mandating of gender-based affirmative action programs. At the 45th national congress in 2005, officials from several districts defied the Muhammadiyah Executive Board by refusing to send at least one woman representative from each district, as the board—at the urging of the Aisyiyah leadership—had requested.[56] Ruhaini and several other Muhammadiyah women were all eventually removed from office, along with the most prominent male supporters of gender reform.[57]

[54] On the political logic of the "conservative turn," see Martin van Bruinessen, ed. *Contemporary Developments in Indonesian Islam: Explaining the "Conservative Turn"* (Singapore: ISEAS, 2013).

[55] See Siti Ruhaini Dzuhayatin, "Gender and Pluralism in Indonesia," in Robert W. Hefner, ed., *The Politics of Multiculturalism: Pluralism and Citizenship in Malaysia, Singapore, and Indonesia* (Honolulu, HI: University of Hawaii Press, 2001), pp. 253–67.

[56] For a first-hand account of the purge, see Kurniawati Hastuti Dewi, "Perspective versus Practice: Women's Leadership in Muhammadiyah," *Journal of Social Issues in Southeast Asia* 23/2 (2008): 161–85.

[57] On the "conservative turn" in Muhammadiyah, see Syamsiyatun, "Women Negotiating," pp. 158–60; and Ahmad Najib Burhani, "Liberal and Conservative Discourses in the Muhammadiyah: The Struggle for the Face of Reformist Islam in Indonesia," in *Contemporary Developments in Indonesian Islam: Explaining the "Conservative Turn"*, ed. Martin van Bruinessen (Singapore: ISEAS, 2013), pp. 105–44.

Analysts differ on the reasons for this "conservative turn" in Indonesia's two mainstream Muslim organizations. Political observers note that, unlike the situation in several Middle Eastern countries, the results of Indonesian national elections have not seen any surge whatsoever in favor of Islamist parties.[58] Indeed, one of the most striking features of electoral politics in the post-Soeharto era has been that Muslim parties committed to the state-enforced implementation of "Shari'a law" have seen their share of the vote decline. Similarly, in the course of debates over constitutional reforms during 2001–2, efforts to insert a clause into the constitution requiring the state to enforce "Shari'a" were repeatedly rebuffed, with mainstream Muslims joining secular nationalist parties to oppose the amendment.[59]

In the aftermath of these setbacks, however, Islamist parties and movements launched campaigns to compensate for their failures in the capital by building up their influence in the provinces. Among other things, they sought to implement "regional bylaws" (*peraturan daerah*), many of which addressed issues broadly seen as Shari'a inspired. The most common bylaws dealt with matters of broad public concern, including prostitution and the easy availability of drugs and alcohol. But others have taken aim squarely at girls and women: requiring the wearing of the hijab in schools and public spaces, and limiting the movement of unescorted women after dark. Although the bulk of this morals legislation was concentrated in regions long regarded as bases for Islamist movements, some of the most ardent supporters of the regulations were politicians from broadly secular nationalist parties.[60]

Although the heyday of Shari'a bylaws seems to have passed, the trend was indicative of a broader populist turn to Indonesian politics in the new democratic era. In the more open environment of the 2000s, politics has taken on a far more rough-and-tumble air, one less favorable to the scaling up of initiatives for a gender-equitable reformation of religious and state law. In short,

[58] See, for example, Edward Aspinall, "Elections and the Normalization of Politics in Indonesia," *South East Asia Research*, 13/2 (2005): 117–56; Marcus Mietzner, "Comparing Indonesia's Party Systems of the 1950s and the Post-Soeharto Era: From Centrifugal to Centripetal Inter-Party Competition," *Journal of Southeast Asian Studies*, 39/3 (2008): 431–53; Andreas Ufen, "From *Aliran* to Dealignment: Political Parties in Post-Suharto Indonesia," *South East Asia Research* 16/1 (2008): 5–41.

[59] Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia* (Singapore: ISEAS Press, 2007); Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu, HI: University of Hawaii Press, 2008), pp. 79–107.

[60] On the broader political context for the bylaws, see Robin Bush, "Regional Sharia Regulations in Indonesia: Anomaly or Symptom?" in *Expressing Islam: Religious Life and Politics in Indonesia*, ed. Greg Fealy and Sally White (Singapore: Institute of Southeast Asian Studies, 2008), pp. 174–91; Michael Buehler, "The Rise of Shari'a Bylaws in Indonesian Districts: An Indication for Changing Patterns of Power Accumulation and Political Corruption," *South East Asia Research* 16/2 (2008): 255–85.

the post-Soeharto era's openness has allowed conservatives and militants to exercise an influence on public debate greater than their actual representation in society—or than their share of the vote in national elections.

FAMILY LAW REFORM REBUFFED

It was in the rough-and-tumble atmosphere of a democratic opening and a coarsening of public contention that Muslim feminists launched their boldest attempt at legal reform—only to see the proposal decisively rebuffed. The initiative was the release in October 2004 of a draft bill known as the Counter Legal Draft (CLD), which was put forward to revise sections of the Compilation of Islamic Law used in the country's Islamic courts for matters of marriage, divorce, and inheritance.[61] The CLD was prepared by a seven-member team of Islamic legal scholars under the leadership of Siti Musdah Mulia, a professor at the Hidayatullah State Islamic University in Jakarta and a special assistant to the Minister of Religion. The recipient of numerous international awards (including the US government's International Women of Courage Award), Mulia had been born into a conservative Muslim family, and received her early training in a *pesantren*. Known for her staunch support of women's rights, freedom for religious minorities, and (in recent years) gay rights, Mulia was recruited by the Ministry of Religion in 2001 to lead a "Working Group for Gender Mainstreaming."

At first, the timing seemed right. The years 2000–2 were peak years for both Muslim democratic and feminist activism in Indonesia. Conservative Islamists, including those in militia groups like the Islamic Defenders Front,[62] had not yet finished their work of putting in place a national network, a project they would largely complete by 2005. A renowned Muslim democrat, Abdurrahman Wahid, was president (through August 2001). Under Wahid's leadership, the Ministry for the Empowerment of Women moved to implement a series of bold gender reforms. In 2001, in particular, the Ministry announced a national policy of "zero tolerance" for violence against women. The policy's action plan singled out several provisions from the Compilation of Islamic Law used in Islamic courts as discriminatory. Mulia's team of legal scholars

[61] On the CLD, see Siti Musdah Mulia and Mark E. Cammack, "Toward a Just Marriage Law: Empowering Indonesian Women through a Counter Legal Draft to the Indonesian Compilation of Islamic Law," in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, ed. R. Michael Feener and Mark E. Cammack (Cambridge, MA: Harvard University Press, 2007), pp. 128–45; Lindsey, *Islam, Law*, pp. 69–101.

[62] Ian Douglas Wilson, "'As Long as It's Halal': Islamic *Preman* in Jakarta," in *Expressing Islam: Religious Life and Politics in Indonesia*, ed. Greg Fealy and Sally White (Singapore: Institute of Southeast Asian Studies, 2008), pp. 192–210.

also argued that some clauses in the Compilation were in violation of international agreements with regard to girls and women to which Indonesia was a signatory.[63]

At first, the CLD seemed to enjoy the support of officials in the Ministry of Religion. Even Western scholars of Islamic law, however, were surprised by the boldness of the CLD reforms. The senior Australia-based scholar of Indonesian *fiqh*, M.B. Hooker, described the CLD as "a surprising document which . . . absolutely rejects the established principles of *fiqh* in favour of a purely secular scheme of family law."[64] Mulia and her team, however, rejected such characterizations, insisting that the CLD "embraces the . . . Qur'anic commitment to equality and freedom in a thoroughgoing and uncompromising way."[65] In this and other statements, Mulia justified the draft with explicit reference to the principle of legal reasoning long popular among modernist reformists: citing the higher aims of the Shari'a (*maqasid al-shariah*) to relativize and displace long-established *fiqh* rulings. More specifically, Mulia argued that "the principle of the equality of human beings before God" flows from the core Islamic principle of God's unicity (*tawhid*).[66]

Five of the CLD's proposals proved especially controversial in conservative and even mainstream Islamic circles. These were the draft's proposal to ban polygyny outright; to allow interreligious marriages; to do away with the requirement that a woman be represented by a male guardian (*wali nikah*) in the marriage ceremony; to equalize inheritance shares for sons and daughters; and to make disobedience (*nusyuz*) a moral failing for which husbands as well as wives can be faulted. All of these provisions were at variance with the Compilation of Islamic Law used in Indonesia since 1991. The reforms amounted to a high-stakes gamble to replace existing *fiqh* traditions with a contextual program premised on the notion that "the purpose and goal of Qur'anic text . . . is the eventual emancipation of humanity from all forms of bondage and oppression."[67]

In the end, however, the strategic gamble proved ill-timed. Between 2001 and 2004, the circumstances of Indonesian democracy changed. After a bitter dispute with former allies, President Wahid was ousted from office in August 2001. At first startled by the boldness of Muslim democrats and feminists in the early years of the post-Soeharto era, by 2002 conservative Islamists had rebounded and begun to stage well-coordinated campaigns against both groups. The largest militant organizations, including the Islamic Defenders Front, the Hizbut Tahrir Indonesia, and the Council of Indonesian Mujahidin

[63] On these legal tensions, see Mulia and Cammack, "Toward a Just," p. 133.
[64] Hooker, *Indonesian Syariah*, p. 25.
[65] Mulia and Cammack, "Toward a Just," p. 128.
[66] Mulia and Cammack, "Toward a Just," p. 137.
[67] Mulia and Cammack, "Toward a Just," p. 138.

(MMI), established media-savvy networks for countering liberal reform initiatives, combining social media blitzes with sometimes violent demonstrations.[68] Although the militants were unable to translate their protests into electoral gains, their ability to intimidate officials and disseminate their message through a network of mosque preachers proved brilliantly effective at shifting public opinion just enough to impede efforts at far-reaching reforms.

Two weeks after its introduction, the Minister of Religion withdrew the CLD from legislative discussion. Muslim intellectuals whom I interviewed over the next two years lamented that they had not realized that the CLD draft had poured fuel on the fire of a neo-conservative backlash, not least in semi-governmental bodies like the Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI). In 2005, just a year after the CLD controversy, the MUI issued a fatwa declaring that "secularism, pluralism, and liberalism" were contrary to Islam.[69] Over the months that followed, conservative Islamist vigilantes cited the fatwa to justify attacks on liberal Muslims and Muslim non-conformists.[70] It seemed that the heyday of pluralist and feminist activism in Indonesia had passed.

Although the situation of Muslim gender reformists seemed to have darkened in 2004, subsequent developments have not proved as dire as first feared. Although it remains a regular target of neo-conservative criticisms, the UIN-IAIN continues its programs of "gender mainstreaming." In the face of a rash of terrorist bombings in the early 2000s, many of them targeting the Christian minority, the Indonesian state launched one of the most even-handed and successful anti-terrorism campaigns in the entire world.[71] In 2014, Indonesia elected a new president, Joko Widodo, a pluralist Muslim who, though not an intellectual, has long shown a generous hand on matters of interreligious

[68] On the varieties and tactics of anti-liberal militants, see Robert W. Hefner, "Civic Pluralism Denied? The New Media and *Jihadi* Violence in Indonesia," in *New Media in the Muslim World: The Emerging Public Sphere*, ed. Dale F. Eickelman and Jon W. Anderson (Bloomington, IN: Indiana University Press, 2003), pp. 158–79; Robert W. Hefner, "Islamic Radicalism in a Democratizing Indonesia," in *Routledge Handbook of Political Islam*, ed. Shahram Akbarzaden (New York and London: Routledge, 2012), pp. 105–18. Hilmy, "Islamism"; Wilson, "As Long."

[69] See Piers Gillespie, "Current Issues in Indonesian Islam: Analysing the 2005 Council of Indonesian Ulama Fatwa No. 7 Opposing Pluralism, Liberalism, and Secularism," *Journal of Islamic Studies* 18/2 (2007): 202–40; Moch Nur Ichwan, "Towards a Puritanical Moderate Islam: The Majelis Ulama Indonesia and the Politics of Religious Orthodoxy," in *Contemporary Developments in Indonesian Islam: Explaining the "Conservative Turn"*, ed. Martin van Bruinessen (Singapore: ISEAS, 2013), pp. 60–104; John Olle, "The Majelis Ulama Indonesia versus 'Heresy': The Resurgence of Authoritarian Islam," in *State of Authority: The State in Society in Indonesia*, ed. Gerry van Klinken and Joshua Barker (Ithaca, NY: Cornell Southeast Program Publications, 2009), pp. 95–116.

[70] See HRW, "In Religion's Name."

[71] On the course and achievements of the government campaign, see Sidney Jones, "Indonesian Government Approaches to Radical Islam since 1998," in *Democracy and Islam in Indonesia*, ed. Mirjam Künkler and Alfred Stepan (New York: Columbia University Press, 2013), pp. 109–25.

relations, women's issues, and, above all, the rights and dignity of ordinary citizens.

Although there seems little possibility any time soon of bold reform of family laws, Muslim feminist ideas on sexual trafficking, violence against women, and male abuse of *talaq* divorce not only continue to get a public hearing, but make significant legislative headway. The long hoped-for reform of Indonesian marriage laws remains a distant dream. But Indonesian democracy has defied its skeptics. The movement of Indonesian women into higher education, employment, and the Islamic sciences also shows no signs of abating. The alternative ethical sensibilities to which the latter changes give rise are, it seems, still powerfully alive.

CONCLUSION: ISLAMIC LAW AND NEW GENDER ETHICS

The Indonesian example has parallels in other Muslim societies. In many national settings, more open politics allows conservative militants to use demonstrations and threats of violence to intimidate party and government officials, and mobilize sufficient public opinion as to make the costs of liberalizing reforms greater than most politicians are willing to pay. If this situation applies to post-Soeharto Indonesia, it applies all the more to countries where the political transition moved from simple regime change to violent social upheaval, as in Libya, Egypt, Syria, and Iraq.

Together these examples indicate that, in the aftermath of the Muslim world's varied transitions, there will be no one-size-fits-all model for gender-sensitive legislative reform. But the examples also demonstrate that there are some common prerequisites. First, where, as in so much of today's Muslim world, some variety of Islamic awakening has given rise to calls for the implementation of an essentialized and state-based variety of Shari'a law, successful reform will require leaders with the intellectual wherewithal to engage Islamic legal traditions on their own terms. Second, after having engaged these traditions, the leadership will have to work to organize a coalition willing and able to turn the fruits of such efforts into some kind of state-enforced legislation.

A third and final prerequisite for sustainable gender reform concerns changes in popular and scholarly understandings of Shari'a. Where mainstream Muslims equate the historical *fiqh* with an unchanging and unquestionable Shari'a, gender reformists proposing changes to *fiqh*-based legislation risk being smeared with the accusation of apostasy. Seen from this angle, the rise of campaigns for the implementation of an unreformed Shari'a may well put the proponents of gender reform on the defensive.

However, as one looks across the twenty-first-century Muslim world, it is clear that the Islamic Awakening and movements for the implementation of Islamic legal traditions have unintentionally created something of a civilizational learning curve. The earliest proponents of state-imposed Shariʿa promoted an unreformed variety of *fiqh* they claimed was divine Shariʿa. What these proponents did not anticipate was that many Muslim publics brought a more expansive and contemporary set of moral registers to bear on their understanding of and hopes for Islamic ethics and law. The resulting social "disconnect" has been so great that it has led growing numbers of believers to ask: Is what *they* call the Shariʿa *really* God's law?

Although often overlooked in accounts of contemporary Muslim politics, the expectation that Islamic legal and ethical traditions can be forces for equality and social justice is a powerful one. The ethical vision of which this expectation is part reflects, not the long shadow of ancient legal traditions, but the bright hopes of new Islamic moral registers, including, very importantly, those that have emerged from social and educational experiences that are becoming more rather than less widespread in our age. In these uniquely late modern circumstances, today's proponents of gender reforms seek to work within the framework of Islamic ethico-legal traditions. The aspiration reminds us that, as Badran has noted for the Middle East, the ethical imaginary at work here is not a simple derivative of Western feminism.[72] But the new Muslim feminism also finds moral inspiration in life experiences beyond Islamic traditions alone. Far-reaching changes in education and society lead many believers to imagine Islamic gender ethics in new and more equitable ways. The resulting hope for a new gender justice has become a powerful global force. However great its current challenges and setbacks, it will remain one of the driving forces for Islamic ethical reform in our age.

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[72] Badran, *Feminism*, p. 9.

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5

Islamic Feminism

National and Transnational Dimensions

Susanne Schröter

WOMEN'S RIGHTS, STATE FEMINISM, AND ISLAMIC REVITALIZATIONS

Since the end of the eighteenth century, the dynamics for the formation of new gender orders have quickened and become delocalized. Both in Europe and the US, as well as in the countries of the Islamic world, reform-oriented men and women questioned the dominant gender orders and asked for women's rights, especially the right to education, equality in social participation, and reforms in family law. The activists focused not merely on transforming gender relations, but saw their efforts as part of a larger project of anti-colonial reforms, linking the emancipation of women to demands for national independence and democracy. One of the centers of such efforts was Cairo, where, during the nineteenth century in the salons and private circles of writers and intellectuals, models for a modern postcolonial society were discussed. Islamic reformists such as Muhammad ʿAbduh (1842–1905) and the Iranian-born Jamal ad-Din al-Afghani (1838–1897) engaged with European intellectual currents and began to reinterpret Islamic sources. The legal scholar Qasim Amin (1863–1908), who was influenced by ʿAbduh, published a book in 1899 with the programmatic title *The Liberation of Women* (*Tahrir al-Mar'ah*) and a second book in 1901 entitled *The New Woman* (*Al-Mar'ah al-Jadidah*). Social reforms and women's emancipation were thus intrinsically linked to the achievement of national independence. In March 1919, a group of veiled women demonstrated in the streets of Cairo against British rule. Women's rights activists formed political organizations that also demanded the end of colonialism. In 1914, the activist Huda Shaʿarawi established the Women's Refinement Union (al-Ittihad al-Nisa'I al-Tahdibi), and in 1920, when the nationalist Wafd Party established its women's wing, Shaʿarawi was

selected to lead it. These movements were subsequently challenged in the 1930s by the Islamist Muslim Brotherhood (Ikhwan al-Muslimun), which, to this day, is supported by broad sections of the population, as the results of the 2011 elections made evident. To this day, the competition between secular, Islamist, and moderate Islamic groups over who has the authority to interpret religious sources and the legitimacy to define the political agenda continues to shape the political landscapes in many Muslim states. One of the most important arguments against women's equality was that it supposedly mimicked Western values, or, rather, was a symbol of having succumbed to Western imperial dominance. In Iran, this tendency was designated "Gharbzadegi," a term first coined by the philosopher Ahmad Fardid. It is commonly translated as "Westoxification," or as "Occidentosis," and refers to the poisoning or destruction of autochthonous culture by Western influences.

The critique of supposedly Western models of emancipation, however, is not simply an expression of traditionalist patriarchy, but also the outcome of authoritarian politics. Rulers, such as Kemal Pasha in Turkey,[1] Reza Pahlavi in Iran,[2] or Ben Ali in Tunisia,[3] all undertook top-down measures to secularize societies and to forcefully impose a gender order they regarded to be modern. This so-called state feminism met with resistance from Muslim clerics, but also from poorer segments of the population who did not profit from the regimes' modernization politics to the same degree as elites or the upper middle classes.[4] In Iran, these developments were brought to an abrupt halt in 1970. The Shiʿite clerics under the leadership of Ayatollah Khomeini took power and established the Islamic Republic, which also espoused an Islamic gender order. His victory over the Shah, and over the US and the West, with which he was intimately associated, had a profound effect on Muslims all over the world. Keddie analyzes the developments in Iran, as well as Islamic revivalist movements in general, as variants of Third Worldism,[5] an ideology originally inspired by Marxism that views Third World underdevelopment to

[1] Cf. Jenny B. White, "State Feminism, Modernization, and the Turkish Republican Woman," *National Women's Studies Association Journal* 15/3 (2003): 145–59.

[2] Parvin Paydar, *Women and the Political Process in Twentieth-Century Iran* (Cambridge: Cambridge University Press, 1995); Eliz Sanasarian, *The Women's Rights Movement in Iran* (New York: Praeger, 1982).

[3] Cf. Mounira Charrad, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria and Morocco* (Berkeley, CA: University of California Press, 2001); Ingrid El Masry, "Women's Movements and Counter Movements in Tunisia," in *Women's Movements and Counter Movements: The Quest for Gender Equality in Southeast Asia and the Middle East*, ed. Claudia Derichs (Cambridge: Cambridge Scholars Publishers, 2014), pp. 107–36.

[4] Cf. Hamideh Sedghi, *Women and Politics in Iran: Veiling, Unveiling, and Reveiling* (Cambridge and New York: Cambridge University Press, 2007), p. 220.

[5] Cf. Nikki R. Keddie, *Iran and the Muslim World: Resistance and Revolution* (Basingstoke: Macmillan, 1995), pp. 212–19.

be the result of Western exploitation.[6] Unlike socialist or secular–nationalist models of postcolonial nationhood, Islamism won the hearts and minds of supporters with its cultural radicalism. It not only resisted political paternalism and economic privilege, but also the destruction of indigenous (in this case Islamic) culture.[7] Materialism and sexual liberalism were denounced as misguided developments from which society had to be shielded. The emphasis on the moral superiority of religiously organized societies over Western ones also had an exonerative effect. Although Islamic countries were underdeveloped from an economic perspective, they were not so with regard to their moral development, so that in the eyes of God they were actually the more civilized nations. Students and young academics, in particular, were quite enthusiastic about the Iranian model and began to acquire religious knowledge. They studied at the theological seminaries in Cairo or Saudi Arabia and returned home to criticize the older generation for having lost touch with the "true faith." They gathered for religious meetings to read the Qur'an and to study the *ahadith*; they established Islamic organizations, schools, and political parties; and they began to influence society at large. Many women participated in these movements and formed their own groups.[8] More so than their male counterparts, they demonstrated their piety by wearing "Islamic dress," which included the veil. In several countries they were regarded critically, but soon they achieved broad-based acceptance for this kind of public display of religious and moral values. In many countries, such as in Indonesia and in Turkey, the prohibition of the veil was gradually lifted, and the legal restrictions eliminated. However, nowhere did such liberalizations bring about greater plurality or more social freedom—quite the contrary. Everywhere where Islamism gained ground, immoral dress was forbidden, the wearing of the veil made compulsory, and an Islamic legal order codified.

These disappointments with secular authoritarianism and the consequences of Islamic revivalism inspired women intellectuals in the 1980s to embark on a third way between Islamic orthodoxy and secular emancipation. In academic terms, this middle path has come to be known as Islamic feminism; it plays a

[6] This is the case with regard to dependency theory as postulated by Andre Gunder Frank and Samir Amin, as well as for Wallerstein's world systems theory.

[7] On the connection between Western dominance and the emergence of Islamic fundamentalism, see also Bassam Tibi, *Islam between Culture and Politics* (Basingstoke: Palgrave, 2001).

[8] Anthropological research on Islamist women's associations has been conducted, for example, by Saba Mahmood, *Pious Formations: The Islamic Revival and the Subject of Feminism* (Princeton, NJ: Princeton University Press, 2004), and Karin Werner, *Between Westernization and the Veil: Contemporary Lifestyles of Women in Cairo* (Bielefeld: Transcript, 1997), in Egypt, and by Wazir Jahan Karim, *Women and Culture: Between Malay Adat and Islam* (Boulder, CO: Westview Press 1992), and Sylva Frisk, *Submitting to God: Women's Islamization in Urban Malaysia* (Gothenburg: Gothenburg University Press, 2009), in Malaysia.

role (although not always explicitly under this term) in the works of Nayereh Tohidi,[9] Ziba Mir-Hosseini,[10] Afsaneh Najmabadi,[11] Riffat Hassan,[12] Raja Rhouni,[13] and Miriam Cooke,[14] and became known especially through the work of the American historian Margot Badran.[15]

THE FOUNDATIONS OF ISLAMIC FEMINISM

One of the cornerstones of Islamic feminism is modern reformist Islam, which emerged in the nineteenth century. Theologically, reform-oriented interpretations of written Islamic sources are grounded in the principle of *ijtihad*, a process of logical reasoning that exists in contradistinction to *taqlid*, which designates the imitation of established tradition. Among the most important recent proponents of such a progressive Islam are Khaled Abou el-Fadl,

[9] Cf. Nayereh Tohidi, "Guardians of the Nation: Women, Islam, and the Soviet Legacy of Modernization in Azerbaijan," in *Women in Muslim Societies*, ed. Herbert L. Bodman and Nayereh Tohidi (Boulder, CO: Lynne Rienner Publishers, 1998), pp. 137–62. In this chapter, she argues that Islamic feminism emerged largely due to the disappointing experiences of Muslim activists, who were confronted with sexism in leftist, religious, and nationalist political organizations.

[10] Cf. Ziba Mir-Hosseini, "Stretching the Limits: A Feminist Reading of the Shari'a in Post-Khomeini Iran," in *Feminism and Islam: Legal and Literary Perspectives*, ed. Mai Yamani (New York: New York University Press, 1996), pp. 285–320; *Islam and Gender: Religious Debates in Contemporary Iran* (Princeton, NJ: Princeton University Press, 1999), pp. 6–7; "Women in Search of Common Ground: Between Islamic and International Human Rights Law," in *Islamic Law and International Human Rights Law: Searching for Common Ground?*, ed. Anver M. Emon, Mark S. Ellis, and Benjamin Glahn (Oxford: Oxford University Press, 2012), pp. 291–303.

[11] Najmabadi defined Islamic feminism in a speech given at the London School of Economics in 1994. Cf. Ayca Tomac, *Debating "Islamic Feminism": Between Turkish Secular Feminists and North American Academic Critiques*. Kingston, Ontario: Queen's University, <http://qspace.library.queensu.ca/bitstream/1974/6736/1/Tomac_Ayca_201109_MA.pdf> (accessed April 3, 2012>, p. 11.

[12] Cf. Riffat Hassan, "Equal before Allah? Woman–Man Equality in the Islamic Tradition," *Women Living under Muslim Laws* (1989), available at: <http://www.wluml.org/node/253> (accessed April 12, 2013); "Religious Conservatism: Feminist Theology as a Means of Combating Injustice towards Women in Muslim Communities/Culture," *DAWN*, Review, November 7, 2002 (2004), available at: <http://www.irfi.org/articles/articles_101_150/religious_conservatism.htm> (accessed December 28, 2011).

[13] In 2010, Rhouni presented a monograph, in the introduction to which she discusses the conceptual history of Islamic feminism. Cf. Roja Rhouni, *Secular and Islamic Feminist Critiques in the Work of Fatima Mernissi* (Leiden: Brill, 2010), pp. 22–37.

[14] Cooke focuses especially on Muslim women authors. Cf. Miriam Cooke, *Women Claim Islam: Creating Islamic Feminism through Literature* (New York: Routledge, 2001).

[15] Cf. Margot Badran, "Towards Islamic Feminisms: A Look at the Middle East," in *Hermeneutics and Honour: Negotiating Female "Public" Space in Islamic/ate Societies*, ed. Asma Afsaruddin (Cambridge, MA: Harvard University Press, 1999), pp. 159–88; "Understanding Islam, Islamism and Islamic Feminism," *Journal of Women's History* 13 (2001): 47–52; *Feminism in Islam: Secular and Religious Convergences* (Oxford: Oneworld Press, 2009).

Abdullahi Ahmed An-Na'im, and Fazlur Rahman (1919–1988), who taught/teach at American universities; the Algerian Mohammed Arkoun (1928–2010); Syrian-born Mohammad Shahrur; Mohamed Talbi, from Tunisia; and Abdolkarim Sorush, from Iran. These reformers emphasize the need to contextualize the Qur'an historically, the importance of distinguishing between text and context, and accord an important role to free will and the power of human reason. In the view of the Egyptian Islamic scholar Nasr Hamid Abu Zaid, the Qur'an is written in such a way that it was easily understood by seventh-century Arabs. However, if present-day Muslims interpret the historical aspects of the Qur'an as if they were universally valid and immutable, then they distort the divine message that exists beyond historical contexts.[16] Many well-known Muslim reform theologians, progressive philosophers, and social scientists work and teach in Western countries as, in their home countries, Muslim authorities and authoritarian rulers have responded to their efforts with repression. One such prominent victim of religious–political violence is the Sudanese scholar Mahmoud Mohammed Taha, whose reformist work *The Second Message of Islam* (*Risalat al-Islam ath-Thaniya*) argued that equality between men and women is a goal of Islamic justice. Mohammed Taha was found guilty of apostasy and was sentenced to death and executed in 1980. Abu Zaid was also accused of apostasy because his critical Qur'an exegesis differed from conservative interpretations of the religious sources.[17] A court declared him a non-Muslim and annulled his marriage on the grounds that, according to the dominant consensus in Islamic family law, a Muslim woman may not be married to a non-Muslim man. This repression and death threats forced Abu Zaid to emigrate to the Netherlands in 1995, where he occupied the Ibn-Rushd Chair for Humanism and Islam.

A second cornerstone of modern Islamic feminism is second-wave feminism,[18] which, in the late 1960s, emerged internationally from the student movement and, in the US, also from the Civil Rights Movement, after which it subsequently became globalized and overcame the dominance of Western feminists. The most remarkable consequence of this transnationalized movement was the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by the United Nations General Assembly in 1979. For the first time in the history of humankind, the equality of the sexes was formally inscribed as a broadly shared goal of political and economic development. CEDAW is the most radical application possible of

[16] Nasr Hamid Abu Zaid, *Ein Leben mit dem Islam* (Freiburg: Herder, 2006), p. 155.

[17] Cf. Nasr Hamid Abu Zaid, *Rethinking the Qur'an: Towards a Humanistic Hermeneutics* (Utrecht: Humanistics University Press, 2004).

[18] The designation "second wave" distinguishes this manifestation of feminism from its predecessor in the nineteenth and early twentieth centuries, which has come to be referred to as the first women's movement.

the principle of equality with regard to gender relations,[19] a program that would foster far-reaching transformations in the countries where it was implemented and that would, moreover, challenge conservative notions of the presumed natural differences between men and women. What is surprising is that the document has also been signed by almost all Muslim or Muslim-majority countries.[20] At the same time, considerable reservations persist. Conservatives criticize CEDAW for its radical feminist agenda and have expressed fears that the implementation of the document would destroy family relationships. It is for this reason that in the US, following its signing by the president, the document was never ratified by the Senate. And, as might be expected, in many Muslim countries the gender model propagated by the convention met with much resistance. Orthodox clerics, fundamentalist revivalists, and cultural traditionalist all agreed that the convention's principles contradicted Islamic ones and that it amounted to little more than the imposition of Western values on the Islamic world in the good old imperialist fashion.[21] The resistance to CEDAW was ultimately not unlike that which had once met the Universal Declaration of Human Rights. An Islamic response to the latter, the Cairo Declaration of Human Rights in Islam, which was passed in 1990 by the Organization of the Islamic Conference (OIC),[22] relativized precisely those parts of the Universal Declaration that questioned male dominance. Instead, it asserted that the Shari'a was the foundation of all human rights.[23] The fact that the majority of OIC member states ratified CEDAW—even if with reservations—constitutes something of a puzzling paradox.[24]

[19] Other political, social, and economic asymmetries that are intimately linked to gender relations are also mentioned. The general text states that the elimination of apartheid, any form of racism, racial discrimination, colonialism, neocolonialism, aggression, foreign occupation, and foreign rule, as well as interference in the internal affairs of other nation-states are necessary for the full realization of men's and women's rights.

[20] The exceptions are Iran, Nauru, Niue, Somalia, Sudan, Tonga, and Vatican City.

[21] Cf. Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal before Allah, Unequal before Man* (The Hague: Kluwer Law International, 2000), p. 239; Michele Brandt and Jeffrey A. Kaplan, "The Tension between Women's Rights and Religious Rights: Reservations to CEDAW by Egypt, Bangladesh and Tunisia," *Journal of Law and Religion* 12/1 (1995): 105–42; Benjamin Stachursky, *The Promise and Perils of Transnationalization: NGO Activism and the Socialization of Women's Human Rights in Egypt and Iran* (New York: Routledge, 2013); Liv Tønnessen, "Feminist Legacies and Gender Justice in Sudan: The Debate on CEDAW and Islam," *Religion and Human Rights* 6/1 (2011): 25–39.

[22] It was signed by the foreign ministers of the forty-five member states of the Organization of the Islamic Conference. The vast majority of these states also signed the anti-discrimination declaration, which represents something of a paradox.

[23] The declaration is non-binding, but makes clear that the universal validity of the model of state and society underlying human rights is not shared by all.

[24] For example, the following OIC member states have signed CEDAW: Afghanistan (2003), Algeria (2006), Egypt (1981), Bahrain (2002), Bangladesh (1984), Brunei (2006), Indonesia (1984), Iraq (1986), Jordan (1992), Kuwait (1994), Lebanon (1997), Libya (1989), Malaysia (1995), Morocco (1993), Saudi Arabia, (2000), Syria (2003), Tunisia (1985), United Arab Emirates (2004).

AMINA WADUD: METHOD AND IMPACT

The success of modern Islamic feminism is inextricably linked with the work of the American Muslim feminist scholar Amina Wadud. Her approach to a gender-just hermeneutic Qur'an exegesis is truly pioneering, and her writings are the most important references for Muslim women's rights activists. For thirty years she has been striving to achieve a reading of the Qur'an that would make it a manifesto for women's liberation, and allows her readers to share in this often precarious endeavor.

However, Wadud's positive relationship with God jarred with her experiences as a woman in the Muslim community, with what she saw as the differences between Islam and what Muslims actually do,[25] as well as with patriarchal interpretations of the Qur'an. The traditional interpretations, Wadud points out, had been exclusively written by men and were based exclusively on male experiences and perspectives.[26] Her desire for justice made it impossible for Wadud to accept the discrimination and exclusion of women. The fact that her conversion took place at a time during which the women's movement was at its peak further motivated her to undertake the endeavor she would later call a "gender jihad," a struggle for the recognition and implementation of gender justice within the Muslim community.[27]

As a student at the University of Michigan, Amina Wadud had the opportunity to bolster her efforts toward her political goal by acquiring academic training, which focused on Qur'anic exegesis. Her motivations for studying the Qur'an resulted from her observations that, in Muslim communities, women did not enjoy the same status as men. She wanted to know whether this was in fact justified by the Qur'an, or whether the arguments commonly presented simply rested on male prejudices. To find out, she turned to the writings of liberal reformist Islam, especially the work of Fazlur Rahman, which was concerned with contextualizing the Qur'an, while at the same time identifying universal Islamic principles such as social justice and the equality of all humans.[28] However, Wadud also found inspiration in the traditions of secular feminist text exegesis.[29] She refers to her method as a hermeneutic one. It is based on three components, the first of which is the contextualization of the Qur'an and the distinction between particular and universal statements.

[25] Cf. Amina Wadud, *Inside the Gender Jihad: Women's Reform in Islam* (Oxford: Oneworld, 2006), p. 21.

[26] Cf. Amina Wadud, *Qur'an and Woman: Re-Reading the Sacred Text from a Woman's Perspective* (Oxford: Oxford University Press, 1999), p. 2.

[27] Cf. Wadud, *Inside the Gender Jihad*, p. 10.

[28] Cf. Tamra Sonn, "Fazlur Rahman and Islamic Feminism," in *The Shaping of an American Islamic Discourse: A Memorial to Fazlur Rahman*, ed. Earle H. Waugh and Frederic M. Denny (Atlanta, GA: Scholars Press, 1998), pp. 123–45.

[29] The confrontation of the male gaze with the feminine and the empowerment of the excluded feminine other are key to academic feminism, while the rereading of religious texts is an established method of Christian, and to some extent Jewish, feminist critique.

The second component of her method aims at examining the "grammatical composition of the text,"[30] which includes studying definitions of key terms and engaging with problems of translation from the Arabic. The third part of her method entails attempts to grasp the "*Weltanschauung* or world-view"[31] that is present in the Qur'an. The most important method is a particular form of hermeneutics that is explained most fully in her book *Inside the Gender Jihad*. The foundation of the Qur'an, she argues, is *tawhid*, the principle of the unity of God, and "the operating principle of equilibrium and cosmic harmony."[32] As an ethical principle, it is connected to social and political spheres and emphasizes "the unity of all human creatures beneath one creator."[33] If it were to become reality, then mankind would become a single community of equals without distinctions based on race, class, gender, religious traditions, nationality, sexual orientation, or other arbitrary aspects.[34] Allah himself is neither male nor female, she insists, and only the limitations of the Arabic language and the historical context had left the false impression of a male God. Wadud expresses God's gender neutrality, or rather gender indeterminateness, by constantly changing the gender pronouns used to refer to him/her. Sometimes she uses "he," then she refers to Allah as "she" or "it," as she did in her Friday sermon in 2005 in New York City.[35]

In 1989, Wadud completed her dissertation and received her PhD in Arabic and Islamic Sciences. Shortly thereafter, she took up a position as Assistant Professor at the Islamic University of Malaysia. Here, in 1992, she published her thesis in English under the title "Qur'an and Woman: Re-reading the Sacred Text from a Woman's Perspective" and in Malay under the title "Wanita di dalam al-Qur'an."

Amina Wadud is a political visionary. In *Gender Jihad,* she writes: "I have an idea about Islam without patriarchy."[36] This utopian vision is a source of considerable conflict with her peers, both in the academic community as well as within the Muslim *ummah*, not least because she criticizes all forms of domination and oppression and because she often portrays herself as a victim of various forms of discrimination. Looking back, she admitted that it had been naive to convert under the impression that it would improve her status as a woman. The longer she lived as a Muslim woman, she recounted, the more inequality she discovered to exist between men and women.[37] Time and again she bemoans that it is primarily men who are accorded the authority to interpret the Qur'an and that their interpretations disadvantage women. In fact, they were being denied the status given by God in the Qur'an as

[30] Wadud, *Qur'an and Woman*, p. 3.
[31] Wadud, *Qur'an and Woman*, p. 3.
[32] Wadud, *Inside the Gender Jihad*, p. 28.
[33] Wadud, *Inside the Gender Jihad*, p. 28.
[34] Cf. Wadud, *Inside the Gender Jihad*, p. 28.
[35] The full text of the sermon is reproduced in Wadud, *Inside the Gender Jihad*, pp. 249–53.
[36] Wadud, *Inside the Gender Jihad*, p. 91.
[37] Cf. Wadud, *Inside the Gender Jihad*, p. 21.

full-fledged human beings. Muslim women generally lacked the knowledge to read and interpret the Qur'an on their own, and so they accepted hypocrisy and discrimination, even if there were alternatives. Wadud shows this to be so by pointing to the example of family ideologies. Full-time mothers are glorified, and it was assumed that these mothers were respected and financially supported by their husbands. But in fact, in Muslim communities this ideal situation was never achieved, nor were women recognized for their efforts. Instead, many Muslim women are forced to support themselves and their children, especially if they are African-American women or single mothers, Wadud says reflecting on her own situation as a divorced woman and mother of five. Single mothers were most often treated as inferior to women with the status of wives and their lives were made even more difficult by religiously justified regulations. One such regulation, Wadud points out, is Islamic family law, according to which, in the case of divorce, child custody is awarded to the father, even if he takes no responsibility for them. Although, in the US, Muslim women could have their cases decided within the US legal system, and so quite easily win custody of their children, in practice they often chose not to do so, since they regarded this to be unIslamic. "The magical expectation that children are provided for and women are pampered and protected mothers, with paradise at their feet," she writes, "is a negative fantasy afflicting the single mother's reality of survival."[38]

NATIONAL AND INTERNATIONAL IMPACT

The Islamic world must be transformed from the ground up, Wadud insists, if one is to achieve the goal of ridding Islam of all forms of oppression. Although she repeatedly asserts that efforts ought to focus on eliminating differences in race and class, she primarily focuses her efforts on the discrimination of women. The gender justice model she strives for is, in its simplest form, basically gender mainstreaming, and entails making women present in all spheres of Muslim life, as well as including them in political and religious leadership positions.[39] It is precisely such inclusion that is highly controversial in the Islamic world, especially women's equality in the religious sphere, and a particularly delicate issue in this regard is allowing women to lead in mixed-sex prayer sessions. Amina Wadud has transgressed this prohibition twice and owes her wide renown precisely for having broken this taboo. The first time, she led the *khutba* at the invitation of the Islamic Da'wah Movement in August 1994 in Cape Town at the Claremont Main Road Mosque. The second

[38] Wadud, *Inside the Gender Jihad*, p. 151.
[39] Cf. Wadud, *Inside the Gender Jihad*, p. 10.

time was eleven years later in the US at the invitation of the Progressive Muslim Union of North America. The second event was anticipated in advance, since Wadud had announced it at a press conference. As a result, she was, as expected, confronted with threats, which made finding a suitable venue rather difficult. Three mosque communities were asked, but could not be convinced to undertake the risk of hosting the event, and an art gallery rescinded its offer to serve as the venue following a bomb threat. Finally, an Anglican church agreed to host Wadud, and state security forces ensured the event transpired peacefully. The reactions that ensued were largely expected, as conservative clerics in particular denounced the event as an act of heresy. The popular theologian Yusuf al-Qaradawi dedicated an entire hour of his television program to criticizing Wadud. One of his arguments was that she had broken with Islamic tradition, while another was that the male sexual drive required the systematic elimination of all things feminine from the public sphere. In his own words:

> It is established that leadership in Prayer in Islam is for men only . . . Prayer in Islam is an act that involves different movements of the body . . . Hence, it does not befit a woman, whose physique naturally arouses instincts in men, to lead them in Prayer and stand in front of them, as this might divert their attention and concentration, and disturb the required spiritual atmosphere.[40]

The Grand Mufti of Saudi Arabia, Abdul Aziz al-Sheikh, called Wadud an enemy of Islam, and a number of Arab newspapers denounced her as mentally unstable.[41] At Al-Azhar University, Suad Saleh, the head of the women's section of Islamic Studies, who also has her own television show *Women's Fatwa* and who is considered to be an Islamic feminist herself,[42] condemned Wadud's presumptuousness.

MUSLIM PROGRESSIVE AND FEMINIST ACTIVISM

More interesting than the fact that the act provoked worldwide controversy, was that it had taken place at all, and that in the US Muslim organizations had felt the time was ripe to initiate a new sort of Islam that was commensurate with the principles of gender justice. Who were the organizers who had supported Amina Wadud, or rather, who had asked her to publicly back their shared endeavor? The Progressive Muslim Union, mentioned in the

[40] <http://abdennurprado.wordpress.com/2005/03/10/about-the-friday-prayer-led-by-amina-wadud/>.

[41] Cf. <http://de.qantara.de/Amina-Waduds-Durchbruch/789c99/index.html>.

[42] Cf. Sharon Ottermann, n.d., *Fatwas and Feminism: Women, Religious Authority, and Islam TV*, <http://www.tbsjournal.com/Otterman.html> (accessed January 3, 2012).

section "National and International Impact," was established in 2004 in Manhattan and dissolved in December 2006. Some of its members, however, continued to be active in a successor organization established in 2007 that goes by the name Muslims for Progressive Values. This association strives for the participation of women in all social spheres and is active in promoting the rights of homosexuals, transgender persons, and queers within the Muslim community. It has connections to other progressive Muslim associations in North America, such as the Muslim Reform Movement Organization of New York and the Network of Spiritual Progressives in Berkeley, and also to organizations outside the US. Until 2009, members of the Progressive Muslim Union ran a website by the name of *Muslim Wake-Up* that propagated their ideas. The third organization involved in the New York event referred to itself as the Muslim Women's Freedom Tour, and was an initiative set up by the South Asian-American journalist Asra Nomani, who had already made a name for herself as a feminist Muslim.

The involvement of so many organizations and initiatives shows that in the US a Muslim subculture had emerged whose views were diametrically opposed to the majority opinion of the *ummah* in the rest of the world. Amina Wadud embodies this new religious impulse so perfectly because she so clearly stands in a tradition of Western identity politics and attempts to link these to new Islamic concepts. She stands for a Western Islam that is as much against sexism as it is against racism and anti-Islamic prejudice, and which ultimately strives for a general egalitarian utopia. On numerous occasions the media pointed out that Wadud's provocative activities could only have taken place in a liberal Western society, in a society where non-Muslims provide the venue for a Muslim Friday sermon and non-Muslim security forces maintain the public order. This is certainly true. In no Islamic country and in no country with an Islamic legal order could a woman have led Friday prayers before a mixed-sex audience.

It is therefore not surprising that Islamic feminism, in both its academic form as a new approach to Qur'anic exegesis as well as in its social activist guise, emerged primarily in the US. The US is not only the point of origin of Islamic feminism, but also the country in which women reformist theologians, authors, journalists, and activists find the ideal environment to develop and publish their ideas. There is a critical mass of supporters that can join together to form associations; liberal Muslim scholars teach at the universities and develop new approaches to make Islam compatible with democratic modernity; the press responds positively to such new, democratic approaches; and Islamist hardliners, who potentially represent a threat, are kept in check by the police. In the academic context in particular, there are plenty of opportunities to combine theological–political interests with professional ambitions.

Asma Barlas, Professor of Political Science at Ithaca College, who, until 2006, ran the Center for the Study of Culture, Race and Ethnicity, and Riffat

Hassan, who received tenure as Professor of Religious Studies at the University of Louisville, are two scholars who have undertaken the project of reinterpreting the Qur'an and Islamic traditions.[43] In her writings and lectures, Hassan sets out two basic aims. First, she seeks to overcome the patriarchy that continues to be enshrined in Islamic traditions. Second, she aims to overcome the undue focus on secular humanism and show that positive ethical values, such as those set out in the Universal Declaration of Human Rights, have a place in religions, and especially within Islam. Riffat Hassan and Asma Barlas represent an academic Islamic feminism that has taken hold primarily in universities and major international non-governmental organizations (NGOs).

In the US, women use the freedoms of Western society and the protection of the state security forces to spread their versions of a new Islam. Since Amina Wadud, several women have led Friday prayers, and the same holds true for Canada, where the Pakistani-Canadian Raheel Raza led Friday prayers as early as 2005.[44] In South Africa, too, where Amina Wadud delivered her first Friday sermon, progressive Muslims are continuing along the path she set out.[45] It even seems that there, under the influence of a particularly engaged progressive Muslim activist group, a certain degree of normalcy has set in, and that women imams no longer provoke much controversy. If we compare the US and Canada with Europe, we have to say that feminist Islam is still rather marginal and certainly is not of the same sort of quality; it is simply more or less reproducing the theoretical and methodological guidelines produced by North American women theologians. For a long time Europe simply lacked the critical mass of educated Muslims who would be in a position to take on a role akin to that of Amina Wadud, Asma Barlas, or Riffat Hassan. Recently, things are beginning to change. In 2012, the group Homosexuels Musulmans de France was established in Paris and opened its own small mosque in which women and men pray side by side; and in Germany, in the spring of 2010 the Liberal Muslim Association (Liberal-Islamische Bund) was established in Cologne, members of which, Lamya Kaddor and Rabeya Müller, had already received widespread attention for their publications on a progressive

[43] Cf. Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Austin, TX: University of Texas Press, 2002); *Text, Tradition, and Reason: Qur'anic Hermeneutics and Sexual Politics* (New York: Yeshiva University, 2004); "Four Stages of Denial, or, My On-Again, Off-Again Affair with Feminism: Response to Margot Badran," Ithaca College, 2006, <http://www.asmabarlas.com/TALKS/BadranResponse.pdf> (accessed November 21, 2016); Hassan, "Equal before Allah?"; "Religious Conservatism".

[44] Raheel Raza is active in the fostering of interreligious dialogue and the author of a popular book. See Raheel Raza, *Their Jihad—Not My Jihad: A Muslim Canadian Woman Speaks Out* (Ingersoll: Basileia Books, 2005).

[45] Cf. Farid Esack, *Quran, Liberation and Pluralism: An Islamic Perspective of Interreligious Solidarity against Oppression* (Oxford: Oneworld, 1997).

interpretation of Islamic sources.[46] Yet other centers of Islamic feminism are Iran[47] and South and Southeast Asia, mainly Indonesia.[48] In India, Asghar Ali Engineer was probably the most well-known proponent of a feminist-inspired reformist Islam. Engineer was born in 1939 in Rajasthan to a Bohra cleric, in a subsect of Shiʿa Islam that is linked to Isma'ilism. His father taught him Islamic theology and the Arabic language. Later, he studied engineering and spent twenty years working in Bombay before he joined Progressive Dawoodi Bohras. In countless publications he discussed the Qur'an, developments in Islam, and contemporary problems in Indian society. Among the many prizes he won was the 2004 Alternative Nobel Prize, which he shared with Swami Agnivesh. Engineer was lauded for his efforts to promote the rights of religious and ethnic minorities as well as for gender-just interpretations of Islam.[49]

Ideas from within Islamic feminism also spread to Southeast Asia, where they were further developed and made the foundation of political campaigns. In Malaysia, these Islamic feminist ideas are associated with the group Sisters in Islam (SIS).[50] In the Philippines, such ideas are linked to the name Amina Rasul-Bernardo. Rasul-Bernardo, a journalist, politician, and activist, has committed herself to the struggle for women's rights, peace, and the rights of the Muslim minority in Mindanao. She is president of the Philippine Center for Islam and Democracy.

FIGHTING FOR GENDER JUSTICE IN INDONESIA

Yet the most remarkable practical development in Islamic feminism is to be found in Indonesia. The Indonesian women's movement emerged during the colonial era, when political organizations established their women's wings. This was true for the two largest Muslim organizations, the Muhammadiyah (founded in 1912) and the Nahdlatul Ulama (NU) (founded in 1926). In accordance with Indonesian custom that incorporates age-specific categories into its social structures, each group established organizations for both younger and older women. Today, the organizations for younger women, Nasyiatul Aisyiyah and Fatayat Nahdlatul Ulama (Fatayat NU), in particular, have taken

[46] Lamya Kaddor, *Muslimisch–weiblich–deutsch. Mein Weg zu einem zeitgemäßen Islam* (Munich: Beck, 2010).

[47] Cf. Chapter 9, this volume; Valentine M. Moghadam, "Islamic Feminism and its Discontents: Towards a Resolution of the Debate," *Signs: Journal of Women in Culture and Society* 27/4 (2002): 1135–71.

[48] Cf. Susanne Schröter, ed., *Gender and Islam in Southeast Asia: Women's Rights Movements, Religious Resurgence and Local Traditions* (Leiden: Brill, 2013).

[49] Cf. Asghar Ali Engineer, *Islam, Women and Gender Justice* (New Delhi: Gyan Publishing House, 2001).

[50] See Chapter 11, this volume.

on leading roles in the further development and localization of ideas taken from Islamic feminism. Fatayat NU was established in 1950 on the initiative of the NU leader Kyai Dahlan. From the outset, Fatayat NU activists worked toward educating women in Islamic teachings, and they preached and carried out Islamic rituals. Apart from their religious activities, they also played a central role in promoting education in general, birth control, and access to healthcare for mothers and their children. The activists organized literacy campaigns and worked toward spreading the Indonesian language. The reproductive rights of women was an issue that corresponded perfectly to what the conservative members of the NU considered to be an appropriate field for women's political activity. However, the Fatayat activists were not content to simply busy themselves providing instructions for improved hygiene and healthier nutrition. In their view, other problems were far more pressing: child marriage, polygyny, inequality between men and women in divorce law, and domestic violence between married couples. In the late 1990s, Fatayat NU started a program to further women's rights (Penguatan Hak-hak Perempuan), and in the year 2000 they established a consultancy for the empowerment of women (Lembaga Konsultasi dan Pemberdayaan Perempuan) that was comprised of twenty-six decentralized divisions. An increasing number of activists came out as having themselves been victims of domestic violence, and the organization began to provide not only outside assistance to domestic violence victims, but also educate women in self-help. In order to make this extensive program of reforms compatible with the tenets of Islam, the women activists had to undertake their own exegesis of the Qur'an. Women scholars at centers for women's studies at the various Indonesian universities, but also at a number of independent educational institutions, began to work on reinterpreting problematic verses in the Qur'an and Sunnah in ways that were in line with principles of gender justice, and in the past few years they have published innumerable brochures, leaflets, and monographs arguing that Islamic principles of justice also necessarily include gender equality.[51] Indonesian Muslim feminists such as Siti Musdah Mulia,[52] Neng

[51] Cf. Nelly van Doorn-Harder, *Women Shaping Islam: Reading the Qur'an in Indonesia* (Chicago: University of Illinois Press, 2006); Lies Marcoes-Natsir, "Women's Grassroots Movements in Indonesia: A Case Study of the PKK and Islamic Women's Organisations," in *Women in Indonesia: Gender, Equity and Development*, ed. Kathryn Robinson and Sharon Bessell (Singapore: ISEAS, 2002), pp. 187–97; K. H. Husein Muhammad et al., *Dawrah fiqh perempuan. Modul kursus Islam dan gender* (Cirebon: Fahima Institute, 2007); Susanne Schröter, "Progressive and Conservative Women's Movements in Indonesia," in *Women's Movements and Counter Movements: The Quest for Gender Equality in Southeast Asia and the Middle East*, ed. Claudia Derichs (Cambridge: Cambridge Scholars Publishers, 2014), pp. 79–106.

[52] Cf. Siti Musdah Mulia, *Counter Legal Draft: The Compilation of Indonesian Islamic Law* (Jakarta: Ministry for Religious Affairs of the Republic of Indonesia, 2004); *Muslimah reformis. Perempuan pembaru keagamaan* (Bandung, Mizan, 2005); *Islam dan inspirasi. Kesetaraan gender* (Yogyakarta: Kibar Press, 2006).

Dara Affiah,[53] and Lily Zakiyah Munir,[54] who passed away in 2011, work hand in hand with secular feminists to address problems in the areas of family law,[55] reproductive health, and domestic violence. Furthermore, unique to Indonesia is not only the enormous numbers of women's rights NGOs, but the existence of a men's movement, the Alliance of New Men (Aliansi Laki-laki Baru), which works toward establishing non-patriarchal images of masculinity and participates in campaigns to fight domestic violence.

INTERNATIONAL ORGANIZATIONS AND MOVEMENTS

The majority of Muslim feminist organizations are active at the national level, and to some extent, depending on the issue, transregionally, such as in the context of Muslim Southeast Asia. A number of organizations have also established an international presence. One of these is Women Living Under Muslim Laws (WLUML). The group was established in 1984 by nine women from Algeria, Morocco, Sudan, Iran, Mauritius, Tanzania, Bangladesh, and Pakistan, and soon found support in other countries. Today it is comprised of individuals and organizations in seventy nations, and promotes the struggle for women's rights both in countries with Muslim majorities and in those with Muslim minorities. The spectrum of activities they support is broad and includes campaigns against stoning, fighting for the release of women's rights activists from prison, as well as promoting awareness for lesbian, gay, bisexual, trans, and/or intersex (LGBTI) rights. WLUML's agenda is oriented along the lines of the Universal Declaration of Human Rights and various supplementary declarations, like CEDAW. Although they do not have a specifically religious focus, they have in the past organized "Qur'anic interpretation meetings."

Decidedly more religious in orientation is Musawah, a network founded in 2007 on the initiative of the Malaysian NGO SIS, which decided to expand its activities beyond Malaysia to work toward reforms in Islamic family and personal law internationally. Today, by its own account, it has members in fifty countries. To communicate and disseminate information, they have a homepage on which they post videos of important events and on which they offer a quarterly journal for downloading. Musawah regularly publishes

[53] Cf. Neng Dara Affiah, *Muslimah feminis. Penjelajahan multi identitas* (Yakarta: Nalar, 2009).

[54] Cf. Lily Zakiyah Munir, "Islam, Gender, and Formal Shari'a in Indonesia," (2004a), available at: <http://gondayumitro.staff.umm.ac.id/files/2014/09/1.Islam__Gender_and_Formal_Sharia.pdf> (accessed April 12, 2010).

[55] Cf. Nina Nurmila, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia* (London: Routledge, 2009).

country reports that inform about the situation of women and the progress made by activists, as well as essays and statements pertaining to key questions of feminist Islam, questions that to some extent go beyond issues pertaining to family law, such as the issue of female preachers. While SIS publishes in Malay and English, Musawah makes their material available in English, French, and Arabic, thus reaching educated women from all Muslim regions. Forty-nine women's organizations are linked to the Musawah homepage, and the institutions providing funding are also listed.

The aim, to implement legal reforms, or to at least raise awareness that such reforms are needed, is to be achieved through workshops and other educational events and training sessions, much like SIS. Musawah defines itself as a "global movement for justice and equality" and is also organized as an NGO that is run by professional activists. Moreover, it brings together a considerable number of academically trained Muslim activists who are striving for reforms in the gender order in Islamic countries. If one were to ask about the impact of Islamic feminism, then Musawah would undoubtedly stand as an effective example of the theoretical concept. Musawah disseminates the ideas that otherwise would have been limited to national or regional circles, and facilitates the establishment of networks. It is the only transnational Muslim organization that is explicitly founded on the principles of Islamic feminism, even though its activists never use the term themselves.[56] What also makes Musawah stand out is the attempt to bring together universal human rights, national guarantees to protect women's rights, and the foundations of Islam.[57]

ISLAMIC FEMINISM: A CONTESTED CONCEPT

Islamic feminism is a controversial concept and, for some feminists, a contradiction in terms. Particularly among Iranian women, before the experiences of the Islamic Revolution, it was extremely controversial.[58] Fundamental critiques of Islamic feminism were thus formulated by scholars such as Haideh Moghissi,[59] Shahrzad Mojab,[60] and Hammed Shahidian.[61] For Moghissi, moreover, it is a concept originating exclusively from the Muslim diaspora.

[56] Personal statement, Zainah Anwar, April 30, 2011, in Berlin.

[57] Cf. Zainah Anwar, "Introduction. Why Equality and Justice Now?," in *Wanted: Equality and Justice in the Muslim Family*, ed. Zainah Anwar (Petaling Jaya: Sisters in Islam, 2009), p. 8.

[58] Cf. Moghadam, "Islamic Feminism," pp. 1148–52.

[59] Cf. Haideh Moghissi, *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis* (London: Zed Books, 2005).

[60] Cf. Shahrzad Mojab, "Theorizing the Politics of 'Islamic Feminism'," in "The Realm of the Possible: Middle Eastern Women in Political and Social Spaces," special issue, *Feminist Review* 69 (2001): 124–46.

[61] Cf. Hammed Shahidian, "Islamic Feminism Encounters Western Feminism: An Indigenous Alternative?" Paper presented to Globalization, Gender, and Pedagogy: Proceedings of the

For many Muslim women, however, Islamic feminism offers a chance to reconcile religion and emancipation. "For most Muslim women," Zainah Anwar from SIS writes, "rejecting religion is not an option. We are believers, and, as believers, we want to find liberation, truth and justice from within our faith."[62] This is not simply a question of piousness, but also of identity. Many Muslim women feel patronized by secular "Western" women and feel that they are misrepresented. This rejection of the pretentions of Western superiority is something they share with other women from the Global South, and it is a stance that has its origins in the postcolonial discourses of second-wave feminism. In a much discussed article, Gayatri Chakravorty Spivak criticized the attempts of British colonial officials to ban the South Asian practice of widow burning, on the grounds that such attempts were such a pretention to superiority; she denied the right of "white men" to save "brown women from brown men."[63] A similar critique was voiced by Leila Ahmed with regard to Lord Cromer's negative views of Egyptian society.[64] The representation of non-Western women, so the criticism runs, is distorted and imagines them to be the oppressed Other to an ostensibly emancipated woman in Western society. Both types of women thus become symbols of their respective cultures: the unfree women of colonized societies served to expose the latter as underdeveloped and barbaric, while the liberated Western woman stood for a higher civilization. Precursors of this postcolonial critique can be identified in black feminism in the US,[65] as well as in Third World feminisms elsewhere.[66]

Joint Women's Studies and Southwest Asian Global Studies Seminar, Illinois State University, February 12, 1998.

[62] Zainah Anwar, "What Islam, Whose Islam? Sisters in Islam and the Struggle for Women's Rights," in *The Politics of Multiculturalism: Pluralism and Citizenship in Malaysia, Singapore, and Indonesia*, ed. Robert W. Hefner (Honolulu, HI: University of Hawaii Press, 1991), pp. 227–52.

[63] Chakravorty Gayatri Spivak, "Can the Subaltern Speak?," in *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg (Basingstoke: Macmillan Education, 1998), pp. 271–313.

[64] Cf. Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven, CT: Yale University Press, 1992), pp. 153.

[65] Cf. Patricia H. Collins, "The Social Construction of Black Feminist Thought," *Signs: Journal of Women in Culture and Society* 14/4 (1989): 745–73; Angela Davis, *Women, Race, and Class* (New York: Random House, 1981); Bell Hooks, *Ain't I a Woman: Black Women and Feminism* (Boston, MA: South End Press, 1982); *Talking Back: Thinking Feminist, Thinking Black* (Boston, MA: South End Press, 1989); *Yearning: Race, Gender and Cultural Politics* (Boston, MA: South End Press, 1990); *Black Looks: Race, Gender and Representation* (Boston, MA: South End Press, 1992). Initial articulations of a separate black feminism emerged parallel to "white" feminism in the late 1960s. Today, parts of the movement have moved away from the term "feminism," instead preferring to refer to their approach as "womanism." Womanism, much like black feminism, claims to analyze within a single framework the various interrelated dimensions of injustice, especially the discrimination of women, racism, and the oppression of the economically underprivileged. Cf. Stacey Floyd-Thomas, ed., *Deeper Shades of Womanism in Religion and Society* (New York: New York University Press, 2006).

[66] Cf. Chandra T. Mohanty, Ann Russo, and Lourdes Torres, *Third World Women and the Politics of Feminism* (Bloomington, IN: Indiana University Press, 1991); Chandra T. Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses," in *Postcolonialism:*

In all cases, assertions of universal sisterhood that had been articulated by white feminists were rejected as being racist, since they ostensibly reproduced claims of white, Western superiority. Black, poor, non-Western women were not helpless victims that needed to be saved by white, middle-class feminists, but were, in fact, perfectly capable of fighting their own battles. Such battles comprised several dimensions that were mutually constitutive: class, race, and gender. In the early 1990s, Kimberlé Crenshaw refashioned this into the concept of "intersectionality,"[67] which analyses the various dimensions of inequality, discrimination, and marginalization as part of an interdependent whole.

When Muslim feminists at the turn of the twenty-first century began to take interest in CEDAW, the postcolonial critique, as well as the mentioned facets of non-Western feminism, were already well established as part of the university mainstream. Many representatives of these currents of thought had become tenured faculty members and comprised the avant-garde of a new critical theory. When Muslim women scholars began to articulate their own critiques of the reigning state of affairs, the basic framework of thinking was basically set; and so it is hardly surprising that they too thought in much the same terms. Key here is the emphasis on the polarity between the West and a Muslim non-West. Riffat Hassan devotes one of her essays to precisely this dilemma.[68] Human rights discourse is a secular discourse, she writes, and many Western activists believe that human rights can only be implemented within a secular framework and that such rights are particularly incompatible with Islam. Moreover, Islam tends to be discussed only in the context of human rights violations. In her view, this is extremely one-sided and only promotes anti-Islamic/anti-Muslim stereotypes.

The postcolonial critique of the West also feeds into the skepticism of Islamic feminists with regard to the term Islamic feminism. One can see this in a debate between Asma Barlas and Margot Badran on the definition of Islamic feminism. For Badran, Islamic feminism is an inclusive term; Barlas disagrees categorically and considers Badran's embrace to be an act of aggression. She asks: "How can people call me a feminist when I'm calling myself a believing woman?"[69] Initially, she admitted to being offended that Badran,

Critical Concepts in Literary and Cultural Studies, ed. Diana Brydon (London: Routledge, 2000), pp. 1183–2309.

[67] Cf. Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine," in *The Politics of Law: A Progressive Critique*, ed. David Kairys (New York: Pantheon, 1990), pp. 195–217; "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43 (1991): 1241–99.

[68] Cf. Riffat Hassan, "Der Qur'an setzt auf Gleichberechtigung" (2008), available at: <http://diestandard.at/1207285890591/Interview-Koran-setzt-auf-Gleichberechtigung> (accessed September 25, 2014).

[69] Barlas, "Four Stages of Denial," p. 1.

an American Catholic, would dare presume to know who she was as a Muslim woman and what she ought to do. She regarded her Muslim identity to be irreconcilable with her ideas of what feminists stood for, although this was not so much for epistemological reasons, but rather for reasons to do with the politics of representation. "Do feminists think that they discovered equality and patriarchy," she asks, and continues, "I derive my understanding of equality and patriarchy from the Qur'an, not from any feminist text."[70] In time, she calmed down and even came to agree with Badran's arguments, which proved particularly useful to her calls for a desecularization of feminism and its localization in the Qur'an. "If my reading of the Qur'an is feminist," she writes, "because it is based in and on the Qur'an, then, clearly I'm an Islamic feminist!"[71] And yet, at the end of her text she once again distances herself from Western feminism, writing "I still seek to protect my sense of self from parts of the West by refusing to speak some common languages."[72] Ultimately, she still regarded feminism as an ideology of Western imperialism, and this, in and of itself, constituted its opposition to Islam.

Two years later, she attended the International Congress of Islamic Feminism in Barcelona and wrote in an online edition of the *Guardian* rather positively of the opportunities presented by this approach. Other Islamic feminists see no reason to distance themselves from the feminist movement. In an interview with the Austrian newspaper *Der Standard,* Riffat Hassan, for example, referred to herself expressly as a "feminist theologian."[73] She is also rather skeptical of the term "westernization," since in her view it tends to be used to denunciate women.

Amina Wadud, too, sees things rather more generously and finds no reason for the polarization of Western and non-Western movements. On the contrary, in *Gender Jihad* she points out that the origins of the contemporary Muslim women's movement for empowerment and inclusion were profoundly impacted by Western theorizations of women's rights and social justice.[74] Yet, she also points out there are differences between the two and insists on the necessity of developing a specifically Islamic conception of human rights. Unlike Barlas, Wadud sees herself less in the tradition of a non-Western postcolonial discourse and more as part of an oppressed black minority. As an African-American, she experienced, even within the Muslim community, discrimination and racism. "When I wear a hijab, I don't look African and my words are measured with politeness; however, when my hijab is not covering my hair, I become Black and my words lose all value."[75] Identity discourses

[70] Barlas, "Four Stages of Denial," p. 2.

[71] Barlas, "Four Stages of Denial," p. 3.

[72] Barlas, "Four Stages of Denial," p. 4.

[73] Hassan, "Der Qur'an."

[74] Wadud, *Inside the Gender Jihad*, p. 8.

[75] As quoted in Tarik Fatah, *"I'm a Nigger and You Will Just Have to Put Up with My Blackness": Professor Amina Wadud Confronts Her Hecklers in Toronto* (2005), available at: <http://www.muslimwakeup.com/main/archives/2005/02/i_am_a_nigger_a.php> (accessed November 8, 2010).

like these reflect the specific cultural and regional contexts in which the struggles of Muslim women in Western countries take place, where, as in Wadud's case, they constitute a marginal group in US society confronted by a racism that had been experienced since early childhood. In Indonesia, the world's largest Muslim country, this is irrelevant. Islamic feminism is not a means to eliminate postcolonial differences, but rather part of an open-ended debate. This potential for conflict, however, is not relevant to all parts of the world. In those places where the most important conflicts for women's rights activists are those with religious hardliners, as in Indonesia, Islamic feminism constitutes a suitable means to raise awareness of women's rights, a goal that pious Muslim women share with secular women's rights activists.

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Part II

Localizing the Interplays between Gender, Law, and Democracy in Different National Contexts

6

Gender Roles and Political, Social, and Economic Change in Bangladesh and Senegal

Katherine Marshall

INTRODUCTION: A COMPARATIVE FRAMEWORK

Bangladesh and Senegal are almost 6,800 miles apart, and they are part of very different world regions (South Asia and West Africa). However, they share some significant common features. Both countries are renowned as Muslim countries with viable, if complex, democratic institutions and quite proudly held democratic principles. Both countries, although with vastly different population sizes (Bangladesh at 159 million versus Senegal at 14 million), have large Muslim majorities and significant minorities of other religious traditions. The constitutions of both countries affirm that their state and government are secular, and religious tolerance and non-discrimination are professed national values. Both Bangladesh and Senegal take pride in their Muslim heritage and traditions and these are, in various ways, reflected in law, society, and politics.

The political trajectories of both Bangladesh and Senegal reflect complex histories. These include established pre-colonial traditions and a heritage that have a continuing influence on approaches to state and society, colonization and decolonization (respectively British then Pakistani for Bangladesh, and French for Senegal), and periods of turbulence as well as stability in the post-independence period. The two countries share predominantly Sunni Muslim traditions, with Sufi institutions and culture as strong shaping forces. And both countries have experienced the forces of modernization that have, inter alia, led to major shifts from historically rural and agricultural economies toward urbanization, and, respectively, manufacturing (especially ready-made garments) and services as major drivers. Economic performance has varied over time, with Bangladesh currently outpacing Senegal in terms of GDP per capita and rates of growth, while natural disasters and economic crises have

left their mark on society and institutions. Both countries send significant numbers of migrants overseas: Bangladesh (nearly 5 million), largely to the Gulf Cooperation countries (GCC), and Senegal (above 500,000) to neighboring West African countries, Europe, and North America. Both this diaspora tradition and broader forces of globalization (especially changes in communications) influence social, political, and religious institutions and practices.

Bangladesh and Senegal both came to independence (in 1971 and 1960, respectively) with strongly traditional societies in which women played clearly subordinate roles, in law and in practice, although in both countries there were well-educated and articulate elite women who advocated for women's equal rights well before independence. The Bengali and Sahelian (West African) cultures, however, had significant pre-Islamic traditions where women had significant if generally subordinate roles. In both countries women have played prominent political roles over a period of decades. More tellingly, there has been substantial social progress for women, in terms of most key indicators (school enrollment, health, engagement in public life). A rich array of women's organizations work as part of lively civil societies to advance women's rights, though in both countries the thrust of their activism has been linked explicitly and strongly to secular as opposed to religious values. Bangladeshi and Senegalese women are prominent in international organizations and settings and Bangladesh has two women who have alternated, with considerable attendant tensions, in holding the position of prime minister over an extended period.

Notwithstanding important progress in advancing women's rights and roles, there are still large gender gaps in both countries. The summary of the World Economic Forum Gender Gap Report for 2015 (Table 6.1) shows the ranking of Bangladesh and Senegal among 145 countries, in comparison to the top ranked Iceland, and bottom ranked Yemen.[1]

Progress and gaps reflect both deliberate government policies, often bolstered and supported by international partners, and areas where policies and their implementation have fallen short of expectations, often despite considerable investment of effort and resources. In Bangladesh, its position as one of the world's countries with the highest child marriage rate and substantial violence and discrimination against women contrasts with success in its family planning program, rapid if mixed progress in girls' education,[2] and the transformational role of the garment industry that employs over 3 million women. For Senegal, again, progress in education (albeit less impressive in

[1] World Economic Forum, *Global Gender Gap Report 2015*, <http://reports.weforum.org/global-gender-gap-report-2015/rankings/>.

[2] Faheem Hussain and Fabiha Naumi, "Female Education in Bangladesh: Promising Present, Challenging Future," Asian University for Women, Bangladesh, 2010, <http://archive.aacu.org/ocww/volume39_2/global.cfm>.

Table 6.1 Bangladesh and Senegal: *Global Gender Gap Report 2015*.

Measure (rank among 142 countries)	Overall Rank	Economic Participation and Opportunity	Educational Attainment	Health and Survival	Political Empowerment
Iceland	1	5	1	n/a	1
Bangladesh	64	130	109	95	8
Senegal	72	65	133	124	27
Yemen	145	145	122	123	140

Source: World Economic Forum, Switzerland, 2016.

terms of achievement than in access) stands as an important indicator of change, as does action to assure parity in political representation, while high maternal mortality, very low contraceptive prevalence, and low labor force participation are indicators that lag behind other countries at similar income levels.

In both Bangladesh and Senegal, religious beliefs and institutions have played significant if complex roles in the political, social, and economic landscapes. Development and political strategies have, from the time of independence, been set against the backdrop of avowed secular values. In both instances the constitutional and political roles of religious institutions and traditions were actively debated at the time of independence. Both then and subsequently the respective roles of secular and religious values and institutions have been contested. Governance decisions reflect, in a stated or unstated backdrop, keen concern about how religious leaders and communities will react (positively or negatively) to change. At different stages, various policies, notably those most closely related to personal status and family law, have, in both countries, encountered religious opposition or simply fear that it might arise. Important policies, notably family planning, bear the clear mark of religious approaches, some positive, some less so.

Both Bangladesh and Senegal pride themselves on distinctive Islamic histories and cultures, in both instances marked especially by Sufi influence. This conscious distinctiveness has, in practice, provided significant support to the democratic political models pursued over the decades, especially in traditions of interreligious tolerance. The Muslim heritage has shaped understandings of national identity from the outset, but so have secular traditions that were the product of history: in Bangladesh, the bitter independence struggle which involved opposition to the Pakistani Islamic rule and the legacy of Partition, and in Senegal, strong respect for the French traditions of *laïcité*. The Bangladeshi and Senegalese democratic models have experienced tension in significant ways, at different times, with secular principles and approaches, in large measure around the roles of religious beliefs and, above all, religious actors in contemporary politics and social policies. Nowhere has this been more significant than with respect to women's rights and roles.

This chapter explores several issues where religious traditions and institutions have shaped historical developments in both Bangladesh and Senegal, focusing on areas where there have been tensions or noteworthy synergy. These issues have contemporary significance because, in both countries, changes in the religious landscape present new challenges. In Bangladesh, the rise of fundamentalist Islamic movements and discourse is a significant political and social force, expressed notably in the media and political outlets, but also in many local communities. In Senegal, the changing nature of religious authority in a rapidly urbanizing society unsettles the implicit "social contract" on which Senegal's democratic institutions are grounded. The influence of more extreme Islamist discourse and political pressures are less apparent in Senegal than in Bangladesh, but there is evidence of a backlash against social change and concerns, in part sparked by violent religious extremism in neighboring countries, but also as part of broader trends emerging in Muslim-majority countries.

Many challenges turn on issues that are particularly important for women's rights. In Bangladesh, the legacy of the violence against women during the Independence War of 1971, the (positive) experience of family planning and its impact on family dynamics, questions around child marriage, and current evidence of a backlash from extremist Muslim groups against women's rights and women's changing social and economic roles are the focus. In Senegal, contests over aspects of the family code, approaches to family planning, and efforts to advance women's rights generally and to combat harmful practices (notably female genital cutting—FGC) are a nagging undertone in a period where relationships between the government and civil society, and thus elements of the democratic political settlement, are at issue.

CONSTITUTIONS, INTERNATIONAL AGREEMENTS, AND OTHER LEGAL TUSSLES

Bangladesh: The Legal and Political Thickets around Secular versus Religious Principles

Four legacies, notably dating back to the formation of the Bangladeshi nation, have particular importance for gender relations: constitutional provisions and tensions regarding the nature of the secular state, approaches to family law with respect to religion, the violence against women and women's active roles during the independence struggle (and thereafter), and debates around the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Bangladesh became independent in 1971 and the 1972 constitution highlights the new nation's guiding, foundational principles:

> We, the people of Bangladesh, having proclaimed our independence on the 26th day of March, 1971 and through a historic struggle for national liberation, established the independent, sovereign People's Republic of Bangladesh . . . Pledging that the high ideals of nationalism, socialism, democracy and secularism, which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle, shall be the fundamental principles of the Constitution.[3]

On the principle of secularism, the constitution details that it is to be realized by the elimination of: "(a) communalism in all its forms; (b) the granting by the State of political status in favour of any religion; (c) the abuse of religion for political purposes; and (d) any discrimination against, or persecution of, persons practicing a particular religion." A persisting complexity is that, in its constitution and public discourse, Bangladesh highlights both secular principles and Islam. This has been most evident following the 1988 eighth amendment to the constitution that affirms that: "The state religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions."[4]

Bangladeshi religious institutions operate quite independently of the state, with limited direct intervention or controls. Today, the Ministry of Religious Affairs has a supervisory and coordinating role (this has changed over time; following independence, first the Ministry of Education and then the Ministry of Sports, Culture, and Religion had this role). The Ministry's stated role is to "improve religious affairs. It works to contribute [to] the national development through human resource development and working in encouragement of brotherhood, values, [and] religious belief [at] both [the] national and international level."[5] Financial support for the four major religious traditions (Islam, Buddhism, Hinduism, and Christianity) is provided through public trusts. The Islamic trust is the longest established, and is run through the Islamic Foundation. Among its activities, it publishes Islamic literature, sponsors Islamic scholarship, and trains imams through the Imam Training Academy. Mosques and imams operate independently but the government provides meager financial support to mosques that request it. Blasphemy is illegal and there have been some high-profile blasphemy cases. Family law falls entirely within the jurisdiction of religious family courts (separate for each tradition,

[3] Ministry of Law, Justice, and Parliamentary Affairs, Bangladesh, "The Constitution of the People's Republic of Bangladesh," 2010, <http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367>.

[4] Ibid.

[5] Ministry of Religious Affairs, Bangladesh, "Introduction," modified January 13, 2016, <http://www.mora.gov.bd/site/page/9f561846-1e53-4831-8f59-c3d34c2c6939/Introduction>.

though Buddhists fall under Hindu family law). Islamic political parties, which have played significant roles in different periods, and have held parliamentary seats, are currently outlawed. They have, however, exercised an influence out of proportion to their direct electoral success. Finally, the madrasa school system operates in a complex relationship with the government. Bangladesh's Alia madrasas are a unique institution among Muslim countries in that they are run and financed entirely by the government. In contrast, the Quomi institutions have rejected government funding and government attempts to reform curriculum and teaching methods.

Since independence in 1971, the bulk of Bangladesh's laws have applied to all citizens without discrimination based on sex or religious belief. The major exception (that applies in many Muslim-majority countries) relates to issues around the family. Personal status laws on marriage, separation, and divorce set separate rules for Muslims, Hindus, and Christians. Some of these laws date to the nineteenth century; they remain largely frozen in time and have not been revised in decades. The separate personal status laws for Bangladesh's Muslims, Hindus, and Christians discriminate in overlapping but distinct ways. They all grant men greater powers than women in marriage and accessing divorce. Each erects barriers to divorce and economic equality during marriage and after, and none of the laws provide for women's equal right to marital property.

In sum, Muslim personal status laws in Bangladesh are discriminatory in their embrace of polygamy for men, greater barriers to divorce for women, and their limited provisions on maintenance. Women have no right to maintenance beyond ninety days after the notice of divorce (or birth of a child, if the woman is pregnant at the time of divorce). Human Rights Watch observes that even the limited procedural protections for women under the Muslim Family Laws Ordinance (MFLO), 1961, are often not implemented. These issues also apply for other religious traditions.

The Hindu personal status law discriminates against women, recognizing polygamy for men, and upholding significant barriers in place for women in accessing maintenance payments. The law does not recognize divorce, so it is impossible for Hindu women to separate legally from their husbands. A May 2012 bill provided Hindus with the option of registering marriages but fell short of many demands of women's rights activists, notably in failing to include a prohibition on polygamy, in not allowing divorce, and in not providing for compulsory marriage registration.[6]

The central issues for women, of course, lie in how principles of secularism and equality before the law are applied in daily practice. One analysis describes

[6] Human Rights Watch, "'Will I Get My Dues…Before I Die?' Harm to Women from Bangladesh's Discriminatory Laws on Marriage, Separation, and Divorce," 2012, <https://www.hrw.org/sites/default/files/reports/bangladesh0912ForUpload.pdf>.

the constitution as "a playground in which the two main parties fight over a largely imaginary line in the sand between secularism and Islam,"[7] reflecting a common assertion that much religious debate involves a battle of political interests rather than deeply held beliefs. The rich political history bolsters such assumptions. The constitutional principle of secularism in important ways reflects a response to the explicit and violent "Islamizing" aspect of the Pakistani military strategy during the 1971 Independence War and what is often described as a genocide directed against Bangladeshi citizens. Tensions between secularism and religious approaches in Bangladesh have a longer, complex history beyond the independence struggle. Efforts to end or avoid religious tensions and pride in a tolerant form of religion have resulted in a framing of issues geared to assure religious neutrality, or *dharmo niropekkhota*. The focus on secularism has, despite the complexities and debates, opened space for both government and civil society initiatives that aim deliberately to transform social norms for women, for example, in girls' education and microcredit programs (notably advanced by Grameen Bank and Building Resources Across Communities (BRAC)) that favor women.

In practice, the lines between public and personal life are blurred most significantly in certain areas of personal law, especially in the context of citizenship and property rights.[8] Most women's rights activists in Bangladesh have promoted secularism as a means of attaining women's equality, especially in personal laws. A prevailing perception among such activists is that opening the door of religion leaves women's rights open to discriminatory interpretations of Islam. Family law, in particular, has presented complexities from the outset. Whether secularism or Islam dominates depends on interpretation, and thus judges play important roles in the ways in which family law influences Muslims, with similar implications for minorities of different faith traditions.[9] Prominent activist and international relations analyst Meghna Guhathakurta has suggested that, while women's rights in the economic and political sphere have tended to be "most heavily determined by the flows of the political economy than by Islamist ideology . . . Islamization has tended to influence restrictions on women's rights in the legal arena."[10]

The Bangladesh government has recently (2011) elaborated a National Women's Development Policy (NWDP),[11] despite criticism from a section of Muslim clerics and some Islamic political parties. The latter groups contend that equal rights for women in terms of earned property would violate Shariʿa law on

[7] Tahrat Naushaba Shahid, "Islam and Women in the Constitution of Bangladesh: The Impact on Family Laws for Muslim Women," Foundation for Law, Justice, and Society, University of Oxford, 2013, 3, <http://www.fljs.org/files/publications/Tahrat.pdf>.

[8] Ibid. [9] Ibid. [10] Ibid.

[11] Ministry of Women and Children Affairs, Bangladesh, "National Women Development Policy 2011," March 2011, <http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/policies/64238d39_0ecd_4a56_b00c_b834cc54f88d/National-Women-Policy-2011English.pdf>.

inheritance, which stipulates that a woman should inherit only half of what her brother would get. Rasheda Choudhury, an adviser to the Ministry of Women and Children's Affairs, has argued that such criticism is misplaced: the new policy ensures the equal rights of women only with regard to property they have earned themselves, not with regard to what they inherited. The issue has obliged legal experts to consider not only Muslim women, but also those of other religions. Key features of the policy include reserving one-third of parliamentary seats for women and their direct election (women in reserved seats are seen to play largely ornamental functions), as well as new laws to ensure equal opportunity for women in terms of control of their earned property.

An interesting manifestion of the tensions within Bangladesh is a political struggle related to Bangladesh's stance on the international norms reflected in CEDAW and on its ratification. This reflects a broader set of international issues: since women's rights first appeared on the agenda of the United Nations, there has been a running tension between the expression and codification of those rights and the implications of the right to freedom of religion. This tension is seen in uneasy relationships between UN instruments touching on religious rights and UN instruments on women's rights. The former are mute with respect to the relationship between women's rights and religion. The latter are encumbered with substantial reservations by countries concerned with safeguarding their religious tenets and traditions.[12] Thus, the Bangladeshi government ratified CEDAW with reservations that stressed Islamic, Shari'a principles. Women's groups and organizations argued actively against these reservations, demanding that the government of Bangladesh withdraw them. The heated political debates resulted in Bangladesh withdrawing its reservations.

An important backdrop to these tensions and developments is broad-based unequal treatment of women that reflects deep-seated gender-based discrimination in mainstream society. In marriages and separations, for example, women's right of choice is more determined by social obligation than personal choice and is rarely influenced by law and formal policies. There is evidence that this is changing, spurred by education of girls and women's employment outside the home, but data and anecdotes also suggest that, especially in rural areas, change is slow in coming.

Senegal: Constitution, Politics, Family Code, and Parity

Senegal's rather complex constitutional history (new constitutions in 1959, 1960, 1963, and 2001, respectively) reflects a consistent commitment to secular

[12] Michele Brandt and Jeffrey A. Kaplan, "The Tension between Women's Rights and Religious Rights: Reservations to CEDAW by Egypt, Bangladesh and Tunisia," *Journal of Law and Religion* 12/1 (1995–6): 105–42.

principles and to non-discrimination. The 2001 constitution, for example, states that "any discrimination between men and women regarding employment, salary and taxation shall be prohibited" and (Article 15) that "men and women shall have equal rights to gain possession of and own land subject to conditions determined by the law." Article 17 sets out that "The state guarantees families in general and those living in rural areas in particular access to health and welfare services. It also guarantees women in general and those living in rural areas in particular the right to improve their living conditions." In 2010, Senegal passed a Law on Parity centered on elected institutions, and in 2013, it ranked sixth in the world in terms of number of women in parliament (though as of 2014 there were only 13 women mayors out of a total of 557 municipalities).[13]

The Senegalese constitution of 1963 proclaimed respect for freedom and liberties and provided for their protection. It protects political liberties, the right to form trade unions, rights of the individual, freedom of worship, right to property, and other economic and social rights. Senegal has ratified or acceded to ten international human rights covenants and conventions without any reservations. It also ratified the African Charter on Human and Peoples' Rights in 1982. The constitution specifically defines the country as a secular state and provides for the free practice of religious beliefs, provided public order is maintained, as well as self-governance by religious groups, free from state interference. The constitution prohibits political parties from identifying with a specific religion.

In legal and practical terms, the government's direct involvement with religious institutions is quite limited, but there are numerous and complex informal links and relationships. For some years (under President Abdoulaye Wade) there was a separate Ministry of Religious Affairs, but it now no longer operates; the Ministry of the Interior and the Ministry of Women, Family, and Social Development share various responsibilities. These include approving and overseeing the many religiously linked associations (as well as those that are not religious); all domestic associations, including religious groups and non-governmental organizations (NGOs) affiliated with them, must obtain authorization to operate. Foreign NGOs must obtain authorization from the Ministry of Foreign Affairs and register with the Ministry of the Interior. Many operational ministries (for example, education and health) have relationships with religious communities and leaders. Mosque or church construction does not require formal government approval. Neither does the appointment of imams, much less of the *khalifas* and other *confrèrie* leaders; there is no official system for imam training or certification and imams are supported financially by their

[13] Fatou Sarr, "Evolution des normes de genre et stéréotypes de genre au Sénégal et l'impact sur transformation des relations de pouvoir," March 4–15, 2013, <http://www.un.org/womenwatch/daw/csw/csw57/panels/panel4-paper-fatou-sow-sarr.pdf>.

communities. There is limited control over religious media. The government supports the *hadj*, for example, providing airline tickets to many pilgrims. This also applies to Christians. There is an official government delegation to religious pilgrimages in Senegal. The government provides direct financial and material assistance to religious groups, primarily to maintain or rehabilitate places of worship or to underwrite special events, but there is no formal procedure for applying for assistance. All religious groups have access to these funds and often compete for them on an ad hoc basis.

Women and their roles have been present at many stages and from different perspectives in debates in Senegal on modernization and the significance of democracy. The major proxy has been debates around aspects of the family code, though recently the highly politicized debates around parity of representation in democratic institutions have been central. A key aspect of the latter has been the position of Touba, the Mouride city and spiritual center, where Mouride authorities have rejected national legislation requiring specific percentages of women on electoral lists and the government has tacitly accepted the position.

Since it attained independence in 1960, Senegal has functioned with a liberal democratic, constitutional system of government. A multiparty system has been the norm of the Senegalese polity. One legacy of the country's colonial history is that Senegal has produced one of Africa's most active and sophisticated intelligentsia, with a notably cosmopolitan outlook. Traditions of pluralism are embodied in a highly organized civil society that includes trade unionists, students, academics, women's groups, and other professionals. There is a lively, albeit often elitist, discourse reflected in print and other media. Senegal has relatively strong legal and political institutions.

Behind this narrative, however, has been a continuing dialogue (and considerable tension) around new ways of creating a distinctively Senegalese modernity, which scholar Mamadou Diouf describes as related to "behaving, speaking, dressing, perfuming and exchanging in public or private spaces."[14] This was particularly evident following independence, when the issue of religious roles in political systems and institutions divided the political elite. One faction favored the total exclusion of the Sufi leaders, who were so influential during the colonial era, from the political sphere, and (in parallel) the total modernization of Islam. Others sought a more pragmatic blend that would recognize but constrain religious authority. In practice, under Senegal's first president, Léopold Senghor, ethnic and religious leaders were incorporated into the political apparatus as ideological, political, administrative, and economic allies,[15] a settlement that, in evolving forms, persists to the present. In contrast to Bangladesh, Senegal has never had explicitly religious political parties.

[14] Mamadou Diouf, ed., *Tolerance, Democracy, and Sufis in Senegal* (New York: Columbia University Press, 2013).

[15] Ibid.

Of particular importance for women is the family code, a topic of lively debate before and since independence. Scholar Alfred Stepan highlights the debates and eventually progressive laws reflected in the 1972 family code (revised under President Diouf in 1981) that enhanced women's rights in divorce and inheritance as a reflection of the strength of Senegal's democracy and inclusion of religious actors in constructive ways.[16] But the code remains controversial to this day, referred to sometimes by its opponents as a "Women's Code." It is not applied in the Mouride holy city of Touba (officially) and implementation elsewhere is spotty. Scholar Leonardo Villalon argues that in today's political environment, such a code would simply not pass.[17] Indeed, an effort in 2002 to bring the 1972 family code "into line with Islamic law" sparked an extraordinary reaction, with active religious mobilization in favor. President Wade saw a Pandora's box being opened and cut off debate. The issue is on the back burner but not dead.[18] The conservative Islamic groups known as Sunnites, for example, contest the code as an unhealthy compromise between local Islamic traditions and secular French statutes, their argument being that the Qur'an provides adequate protection of women's rights.[19] The role of polygamy remains an especially contentious issue but some Sunnite women's groups also argue for a legalization of FGC and reinstating divorce by repudiation.[20]

Observers of the Senegalese scene argue that, in some respects, there is backsliding and a backlash regarding commitment to women's rights and equality (as well as to other aspects of the nation's democratic institutions). Human Rights Watch reports have contended that, since 1988, the Senegalese state has been sliding gradually into a type of "democratic authoritarianism." Some sectors of the society challenged the election results of 1988 as rigged, and considerable violence ensued, with the government curtailing rights to assemble and demonstrate.

Many debates around human and especially women's rights reflect tensions within Islamic teachings and their interpreters as well as between avowed secularists and others who argue for stronger adherence to religiously grounded traditions. The debates have long roots that involve cultural as well as religious beliefs and practices. In pre-Islamic and pre-colonial history, the current territory of Senegal had different systems alongside one another—matrilineal and

[16] Alfred Stepan, "Stateness, Democracy, and Respect: Senegal in Comparative Perspective," in Diouf, ed., *Tolerance, Democracy, and Sufis in Senegal*, p. 225.

[17] Leonardo Villalon, "Negotiating Islam in the Era of Democracy," in Diouf, ed., *Tolerance, Democracy, and Sufis in Senegal*, pp. 253–4. See also Marie Brossier, "Les débats sur la reforme de la Code de la Famille au Senegal: la rédefinition de la laicite comme enjeu du processus de democratization" (thesis for DEA in African Studies, Université Paris 1, 2004).

[18] Villalon, "Negotiating Islam."

[19] Erin Augis, "Dakar's Sunnite Women: The Dialectic of Submission and Defiance in a Globalizing City," in Diouf, ed., *Tolerance, Democracy, and Sufis in Senegal*, pp. 85–6.

[20] Ibid.

patrilineal—that implied different patterns of power and roles. Another longstanding issue has been the limited formal religious education for women in the Sufi orders that dominate Senegalese Islam, again with different patterns (some orders have long emphasized women's education, though with household responsibilities a priority). Marriage traditions have differed, with certain orders having symbolic marriage virtually from birth (the Layenes). Some religious authorities have dozens of wives. Motherhood is widely valued, as is the family. Polygamy has often been seen as a positive practice, encouraging a sharing of work and offering security for the unmarried and widows, since women traditionally are seen to need a guardian, a *tuteur*. In urban settings, insecurity is a more common feature, and polygamy can become a curse, though a new fashion is said to encourage polygamy even in elite circles because of the stigma attached to unmarried women. Well-educated women have argued that it is better to be a second wife with a chance of being left largely alone than to be single.[21]

In times of transition and especially crisis, Senegal has seen a tendency to return to sources of African tradition, and has also witnessed the emergence of stronger religious fundamentalism. With rapid social change, pressures to put some brake on such change have arisen, and sacred texts are often invoked. In order to combat this backlash, groups of women have engaged in Qur'anic exegesis to find arguments that support equal rights. Is it possible from the texts, for example, to combat polygamy and support parental authority? Under what circumstances do the texts support contraception and abortion without contradicting one's faith? Scholar and activist Penda Mbow argues that, overall, Senegalese women have been successful in navigating the perceived tension between the forces of modernization and, for better or for worse, westernization and a conservatism that is at its base Muslim; the tensions, she says, are overblown, what she calls a "collective psychology."[22]

HARMFUL PRACTICES AND THEIR IMPACT ON WOMEN: THE NATURE OF BACKLASH

Bangladesh: Harmful Practices, Patterns of Violence, and Child Marriage

Looking at areas where issues arise in relation to human rights, Islamic teachings, democratic principles, and women's specific concerns, the most prominent is the nagging persistence of various forms of violence that affect

[21] Personal communications.

[22] Penda Mbow, "L'Islam et la Femme Sénégalaise," *Ethiopiques: Revue négro-africaine de littérature et de philosophie* 66–7 (2001), <http://ethiopiques.refer.sn/article.php3?id_article=1287&var_recherche=femmes>.

women, ranging from child marriage to honor killings to acid attacks. Two major events have shaped thinking and approaches: the Independence War, where between 200,000 and 400,000 women were raped, and the emergence of the garment industry, which has transformed women's situations because the majority of its workers are women. But practices like the tradition of women's seclusion (*purdah*), and more modern issues like human trafficking and child labor, have deep historical and modern roots in economic and social structures.

The legacy of wartime violence includes both heroism and women as victims. *Birangona*, meaning "brave woman," was a term of honor applied in the euphoria after independence, highlighting the nominal celebration of women's heroism both as fighters and as victims of rape during the Independence War. However, promises made then were not fulfilled; virtually nothing was done even to provide basic help to the women who suffered. That gap in translating promise into action is a lingering legacy. An obvious factor was the deep-seated traditions of denigrating women and of "honor" that led to the ostracizing of victims of rape and their children. Another aspect was that officers of West Pakistan who were involved in combat in East Pakistan were from a Commonwealth country, and trained in England, so their conduct was hideously embarrassing for the British government: yet "The West Pakistani officials didn't get why there was so much fuss about that."[23] Both the new government and its international partners maintained silence and inaction. Religious leaders, if anything, accentuated ostracization and continuing stigma.

Bangladesh has one of the highest rates of child marriage in the world. Human Rights Watch reports that 29 percent of girls are married by age 15,[24] and some 65 percent of 18-year-old girls are married. Two percent of girls marry by age 11. A law prohibits child marriage (the Child Marriage Restraint Act—CMRA, first passed in 1929 and subsequently amended several times), and it is a criminal offense to marry or facilitate the marriage of a girl under 18, or a man or boy under 21. However, the law has rarely been enforced and is widely ignored. The CMRA is "flawed, outdated, and cursory." It violates international law by setting different ages of marriage for women and men (18 for women; 21 for men). It sets penalties that are outdated; for example, a fine of 1,000 taka ($13) for arranging or conducting a child marriage. It provides only for punishment, with no attention to preventive

[23] See more at: Sue Tapply, "The Stories of Bangladesh's Brave Women," Women's Views on News, April 16, 2014, <http://www.womensviewsonnews.org/2014/04/the-stories-of-bangladeshs-brave-women/>; and Naimul Haq, "Violence against Women Persists in Bangladesh," Inter Press Service, October 17, 2012, <http://www.ipsnews.net/2012/10/violence-against-women-persists-in-bangladesh/>.

[24] Human Rights Watch, "Marry before Your House is Swept Away: Child Marriage in Bangladesh," June 9, 2015, <https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh>.

measures, or legal and social assistance to people who have been victims of child marriage.[25]

The stubborn persistence of child marriage is due to tradition, the circumstances of poverty, and tacit support by religious leaders. An important contributing factor is the practice of dowry, which is illegal but widely practiced. Government action has had little effect, and has been contradictory: although the government has pledged to end child marriage by 2041, in 2015 the prime minister supported the lowering of the marriage age for girls to 16 (rather than the internationally accepted age of 18). Another factor is the pattern of land ownership. An *Economist* article puts the situation starkly: "Yet look at distribution of land by gender and you might be surprised. There is a very short answer to the question 'Who owns Bangladesh?' Men do."[26]

Domestic violence is another persisting issue that affects women. Bangladesh enacted the Domestic Violence (Prevention and Protection) Act, 2010, that provided new forms of recourse and assistance for women and children who are victims of abuse within their families. The law includes a broad definition of domestic violence, including physical, psychological, sexual, and economic abuse, and grants magistrates the power to issue orders providing victims with protection, housing arrangements, maintenance, compensation, and child custody. Perpetrators of domestic violence can be jailed and/or fined for violations of court orders under the Act. However, the law is rarely enforced and domestic violence is accepted by a significant percentage of the population: in the 2011 DHS survey, 32.5 percent of women said that a husband is justified in hitting or beating his wife for specific reasons (the most common reason given was if the wife "argues with him"—at 22.4 percent). Interestingly, the percentage of women who accept domestic violence is lower in Bangladesh than in other countries from South Asia, such as India and Afghanistan. Religious justifications of, or opposition to, domestic violence remains more potential than actual.

Senegal: Sociocultural Barriers

Senegal is also witness to a gap between legal protections and day-to-day life for women, and lofty principles of equality and equal rights. Several were starkly highlighted during an April 2015 visit by the chairperson of the UN working group on the issue of discrimination against women in law and in

[25] Ibid.

[26] "Who Owns Bangladesh?" *The Economist*, August 20, 2013, <http://www.economist.com/blogs/banyan/2013/08/women-and-property-rights>.

practice, Emna Aouij.[27] She focused on the sociocultural and legal barriers that prevent Senegalese women from fully realizing their rights: "It is unacceptable that under the guise of tradition, customs or poverty, girls and women have their basic rights violated, are assaulted, abused and live in unworthy conditions." She focused in particular on family code provisions that stipulate marital and paternal authority, and she expressed alarm at the level of violence against women, perpetuated by patriarchal attitudes and conservative values—high levels of rapes, incest, sexual harassment, and domestic violence. In practice, there are many obstacles to women's economic participation; for example, over 80 percent of active women work in the informal sector, without benefits or basic social services. Women have very limited access to land, although they account for the vast majority of agricultural production. With regard to education, dropout rates for girls are high, and early marriages and early pregnancies are factors in school failure.

Women's health exemplifies the impact of various barriers. The most obvious is limited access to contraceptives, which contributes, inter alia, to high maternal mortality and morbidity. FGC is a persistent practice in some parts of the country (and ethnic groups), despite Senegal's reputation as a global leader in approaches to ending the practice.[28] A quarter of women aged between 15 and 49 are reported as having been cut. Among women's health problems are: (i) poor hygienic conditions, including constraints to accessing water, especially drinking water; (ii) lack of information and lack of control over their sexual and reproductive rights and health resulting in pregnancies at an early age; (iii) HIV and AIDS prevalence rates that are higher among women; and (iv) harmful practices and traditions. Senegal has one of the most restrictive abortion laws in Africa, which particularly penalizes women in precarious socioeconomic situations and contributes to the practice of infanticide, which is widely discussed if not well documented in Senegal. Unmarried mothers are among the society's most stigmatized groups.

RELIGIOUS BACKLASH AGAINST WOMEN'S RIGHTS, AND IN SUPPORT OF SUCH RIGHTS

Against a history of and national pride in religious tolerance and an inclusive practice of Islam, Bangladesh is witnessing a tendency toward greater extremism that is evident both in communal violence and in a backlash against

[27] United Nations Office of the High Commissioner on Human Rights (OHCHR), "Women in Senegal: Breaking the Chains of Silence and Inequality," April 17, 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15857&LangID=E#sthash.l56Ovwxb.dpuf>.

[28] The NGO Tostan was founded in and is based in Senegal, and has pioneered a rights-based approach to addressing FGC and other harmful practices. See <http://www.tostan.org>.

various forms of modernization, notably in the area of women's rights. This pattern is related to domestic, highly contentious political engagement, where religious discourse can be seen as largely a proxy for power struggles, but also to broader issues linked to migration (largely to GCC countries) and the closer ties and rapid communications that are a facet of globalization. Changes within religious communities are another factor. Sharper voices have spoken out against women's rights and empowerment in recent years. The rising practice of veiling in Bangladesh is not fully explained. Women are compared in public discourse to fruits, needing cover for various reasons. The following is a graphic illustration: an imam, Shah Ahmed Shafi, cited in 2013 newspaper articles:

> You women should stay within the four walls of your houses . . . Sitting inside your husband's home you should take care of your husband's furniture and raise your children, your male kids. These are your jobs. Why do you have to go outside?

The imam compares women with a tamarind, "a fruit that any man would like to taste." He asks, "Why are you sending your daughters to work in garment factories?" Girls should stop school after four or five years, just enough to allow them to keep their husband's accounts.[29]

The discourse of backlash in Senegal is less stark than in Bangladesh, but is nonetheless reflected in the media (especially radio, but also social media). Human Rights Watch, for example, reports that women's rights organizations have been alarmed at the emerging fundamentalism. The government itself has been sufficiently concerned by the activities of one sect to proscribe it. The Sufi orders face competition, above all in terms of ideology, from fundamentalist movements linked to Saudi Arabia and even Iran, that, it is feared, could have consequences in the long and medium term for the status of women. The emergence of a female elite within Muslim Sufi orders, as teachers or informal leaders within the hierarchies, is, in contrast, a trend that could improve the image of women within Islam and lead to their taking on increasingly important roles, though there are also highly conservative women speaking as religious believers, advocating a return to what they describe as traditional and "pure" Islamic ways.

ENGAGING WITH RELIGIOUS ACTORS ON ISSUES AND ON WOMEN'S RIGHTS

In Bangladesh, the religious leadership (clerics and scholars) is almost exclusively male. Secular women's organizations in the past have seldom engaged with these religious leaders. This has been accentuated by the active political

[29] Monu Gupta, "How Shafi Respects His Mother," World Pulse, July 15, 2013, <https://www.worldpulse.com/fr/node/27411>.

roles currently played by religious groups and the politicization of religion (and the "religionization of politics") that are characteristic of contemporary Bangladesh. There are, however, several significant areas of engagement on specific issues. As in other countries (for example, Indonesia), the resurgence of religious extremism has encouraged a new process of reflection and encouraged new efforts to engage in dialogue and cooperation between religious and secular groups.[30]

A first constructive initiative is the effort by significant groups of Muslim women to "take back" the Qur'an, meaning, along the lines of groups like Musawah, to read the texts directly and to focus on those passages that underscore equality.[31] This is occurring both in Bangladesh and Senegal. A second is an ambitious Bangladeshi program known as Leaders of Influence, which has involved United States Agency for International Development (USAID) and the Asia Foundation as external partners, and the Islamic Foundation within the Bangladeshi government. It has focused on training imams in topics related to development. This has also extended to the wives of imams. A third initiative, also in Bangladesh, supported by BRAC University and the World Faiths Development Dialogue (WFDD), encourages public discussion about the tensions around women's rights and the relationship between women's changing roles and religious teachings and practice. A forum in September 2015 clearly showed the different narratives at work, but also a willingness to engage in a deeper dialogue on the issues.[32]

An example of long-standing and generally positive engagement between religious and secular actors in Bangladesh is family planning. The government and its partners reached out to religious authorities early in the ambitious family planning program and secured at least their acceptance.[33] As a result, Bangladesh is viewed as a world leader in family planning practice.

In Senegal, the formal engagement of religious leaders, and notably the Sufi order hierarchies, on issues related to women, has focused on the family code. However, within the context of the government of Senegal's family planning

[30] World Faiths Development Dialogue (WFDD), "Bangladesh: Event Summary: Secularism and Faith-inspired Development—Understanding Contestation and Collaboration," November 22, 2014, <http://berkleycenter.georgetown.edu/events/secularism-and-faith-inspired-development-understanding-contestation-and-collaboration>.

[31] Samia Huq, "Defining Self and Other: Bangladesh's Secular Aspirations and its Writing of Islam" *Economic and Political Weekly* 68/50 (2013). See more at: <http://www.bracu.ac.bd/about/people/samia-huq#sthash.Z9tjL6DT.dpuf>.

[32] WFDD, "Event Summary: Women's Empowerment, Gender Justice, and Religion in Bangladesh," May 16, 2015, <http://berkleycenter.georgetown.edu/publications/event-summary-women-s-empowerment-gender-justice-and-religion-in-bangladesh>.

[33] Katherine Marshall, "Religious Engagement in Family Planning Policies: Experience in Six Muslim-Majority Countries," WFDD, 2015, <http://berkleycenter.georgetown.edu/publications/religious-engagement-in-family-planning-policies>.

program, active efforts to engage religious leaders are currently underway.[34] These involve elaborate consultations that include visits to relevant countries (notably Morocco), preparation of a thorough-going document about Islamic teachings relevant to family planning (including those of Senegalese religious leaders), and active media campaigns. Senegal's family planning programs have in the past been slow to take off, in part because of fear of a religious backlash. The topic was, for long periods, essentially taboo. Current efforts to engage religious actors, including deliberate steps to engage religious women, are an important new development.

CONCLUSIONS

The Bangladeshi and Senegalese experience with democracy, Islamic institutions and beliefs, and women's rights in some respects run parallel to each other. The social and economic developments that are transforming societies are at the same time transforming both religious institutions and women's roles and positions. The interactions and intersections are thus dynamic and complex. The rapid expansion of education (especially for girls), the pace of urbanization, and greater integration into the world economy are key drivers of change. For women, the changes came to societies that were deeply traditional and very poor, subject to upheavals resulting from disasters of floods and droughts and periodic violence. There should be no ambiguity in appreciating that in both countries girls and women were perceived as having lesser value, destined for limited roles outside the family. Gender discrimination across the board started from birth and continued throughout life. Despite important changes, this remains at least partly true in large parts of both Bangladeshi and Senegalese society, where the perceived lesser value and limited roles of girls and women are embedded in socioeconomic systems. With the exception of small and vocal elites, women were generally subordinate to men, subject to violence, and accorded limited rights. Girls' education, very broadly defined, is playing a fundamental part in changing these norms and practices, but patterns of unequal treatment must be addressed both within schools and in the broader society, starting from early childhood and continuing through adolescence and adulthood.

But in contrast to this sobering picture, dramatic changes are in the works. The processes of decolonization and democratization have revolutionized

[34] WFDD, "Senegal's Reproductive Health Challenge: Religious Dimensions and Engagement," 2014, <http://berkleycenter.georgetown.edu/publications/senegal-s-reproductive-health-challenge-religious-dimensions-and-engagement>.

women's roles, in theory and, to a lesser degree, in practice. The secular discourse in both countries has highlighted women's equality and this is reflected in legislation. Implementation lags behind law and rhetoric but it is striking that in both Bangladesh and Senegal gender inequalities are subject to open and lively discussion.

The religious landscape in both Bangladesh and Senegal is subject to the same forces of change. In Bangladesh, religious institutions are affected by a historical pattern of decentralization, pride in religious tolerance but also a history of religiously linked violence, and complex relationships between political Islam and an avowedly secular state and society. The changes both in society and in religious institutions generate tensions that are evident in domains like education, traditionally a religious province. They are very apparent today in relation to the transformation of women's roles—in almost universal girls' education; microcredit and small business where women are prominent; widespread family planning, and thus smaller, different family units as a norm; and women working, above all in the garment industry, but also across the economy. As religious institutions have changed, they have in some respects become more complex, more decentralized, and more diverse. They are thus difficult to engage systematically. Nonetheless, they are an important presence, both at the national level through intensive political mobilization, in education and communities, and in an active religious media. While some religious authorities accept and support the new realities, including the changing roles of women, others see them as a fundamental challenge to their beliefs and authority. This gives rise to tensions and backlash, with a small group engaging in violent action justified in the name of religion. The diversity of religious voices and the increasingly vocal and active extremist minority are a feature of the contemporary Bangladeshi landscape. It is striking how far resistance to reform in domains like family law and sexuality is directly related to the influence of Islamic norms.

In Senegal, the post-independence political, social, and economic transformations are set against a different pattern of religious organization: a more hierarchical leadership tradition that has given rise to intensive and explicit interactions between secular and religious authorities. The power of religious leaders to influence votes in elections and as economic forces has shaped politics and the evolution of democratic institutions in different ways at different points in Senegal's history. But, throughout, religious actors have been a consistent and active part of Senegal's democracy and economy. Sometimes the active support of religious leaders is sought, as is currently the case for family planning. At other times, a tacit acceptance or non-intervention has been the goal. The backdrop here is a progressive diffusion of religious authority and proliferation of actors as new, large generations of Sufi order leadership are less cohesive than their predecessors and as their structures are challenged and changed by modernization, including rapid

urbanization of a traditionally rural society and the active roles of the significant religious diasporas.

A common, often tacitly accepted view of the complex relationships between democracy, Islam, and gender in the two successful Muslim democracies of Bangladesh and Senegal is that progress has come largely despite Islam. Complacent views that downplay religious roles are challenged, however, both by complex religious and gender realities and by the vocal backlash of some religious leaders and communities, generally on an extremist end of the spectrum, but also more toward the center. The remarkable progress women have made in important spheres (notably education and politics) should not obscure the important challenges that remain in translating theoretical equal rights into practice and addressing stubborn harmful practices and beliefs. To this end, intelligent and continuing engagement between women's groups and religious institutions is essential. A matter for concern and dialogue is the often rather tepid response of religious (and often political) leadership in both countries to several traditional practices with negative impact on women that are often justified in religious terms. Examples include child marriage in Bangladesh, FGC in Senegal, and violence against women in both countries. These factors combined point to challenging agendas ahead.

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7

Reforming Muslim Family Laws in Non-Muslim Democracies

Yüksel Sezgin

Whether in the Middle East, or elsewhere, reform in family law has always generated resistance and controversy among those who share competing visions of state–religion, family–nation relations, and of the place and responsibilities of women in society. Resistance to reforming family laws, especially when they are religiously inspired, has been most pronounced within ethno-religious communities that hold a minority position vis-à-vis the state whose institutional ethos visibly reflects the majority community's ethno-religious values and culture. This is particularly true in the context of Muslim minorities in Israel and Greece. Both countries have a long tradition of formally recognizing and applying Muslim Family Laws (MFLs) that they inherited from the Ottoman Empire within their legal systems. Despite this long tradition of accommodation of "Shari'a," however, both countries have refrained from "reforming" or directly interfering with religious laws of the minority through executive or legislative means—due mostly to fear of antagonizing nationalist elements within minority communities. This hesitation has caused MFLs in Israel and Greece to lag considerably behind those of neighboring Muslim nations in terms of both human and women's rights-friendliness—even though these two nations are among the few liberal democracies in the "Shari'a-applying" world.[1]

In the absence of direct intervention through executive or legislative means into MFLs, both governments have instead empowered their civil judiciaries to deal with questions concerning substantive and procedural aspects of Shari'a law and courts.[2] Over the years, civil courts in both countries have been

[1] Yüksel Sezgin, "How Non-Muslim Democracies Engage Shari'a: Lessons for Democratizing Muslim Nations." Meeting of the American Political Science Association, August 30, 2014.

[2] Yüksel Sezgin and Mirjam Künkler, "Regulation of 'Religion' and the 'Religious': The Politics of Judicialization and Bureaucratization in India and Indonesia," *Comparative Studies in Society and History* 56/2 (2014): 1–31.

increasingly asked by plaintiffs, governments, and women's and human rights groups to intervene in the jurisdiction of religious courts in order to uphold constitutional rights such as gender equality, fairness of trials, freedom of religion, the rights of children, and so forth. At this point, the question is how Israel and Greece balance the accommodation of Islamic laws, which many consider a "fundamentally illiberal"[3] legal system, with basic human and women's rights, and what role did the civil courts play in this process? Did they serve as viable agents of systemic change in MFLs? This is the main question that the present chapter will seek to answer. The study relies primarily on analysis of Israeli and Greek religious and civil court decisions (in Hebrew, Arabic, Greek, and Ottoman Turkish) as well as primary data collected by the author through participatory observations and interviews with judges, lawyers, litigants, and experts in Israel proper and Western Thrace, Greece, during multiple field trips in 2004–15.

THE MFL ESTABLISHMENTS IN ISRAEL AND GREECE

Both Israel and Greece have sizeable Muslim minorities (18 percent in Israel, 5 percent in Greece[4]) and formally recognize and apply MFLs within their legal systems. Both countries have inherited their respective MFL systems from the Ottoman Empire. MFLs are applied by specialized Shari'a courts in Israel, and by muftis in Greece.

There are currently eight regional Shari'a courts and a Shari'a Court of Appeals (SCA) (Mahkamah al-Isti'naf al-Shar'iyya) within Israel's pre-June 5, 1967 borders. The courts are staffed with Muslim qadis who are appointed and salaried by the Israeli government. Shari'a courts have exclusive jurisdiction over marriage and divorce and concurrent jurisdiction with civil family courts over all other matters of personal status of Muslim citizens. Since the enactment of the Law of Family Courts (Amendment No. 5) in 2001, Muslim litigants can choose between civil family and Shari'a courts for such matters as custody and maintenance. Both qadis and civil judges apply the same material laws, which include both Islamic and relevant secular laws. However, it is not unheard of them to deliver diverging interpretations due to important normative and structural differences.[5]

[3] Anna C. Korteweg and Jennifer A. Selby, *Debating Sharia: Islam, Gender Politics, and Family Law Arbitration* (Toronto: University of Toronto Press, 2012).

[4] Only about one-fifth of these people live in Western Thrace. See: PEW Research Center, *The Future of the Global Muslim Population* (Washington, DC: Pew Research Center, 2011).

[5] Moussa Abou Ramadan, "Notes on the Anomaly of the 'Shari`a' Field in Israel," *Islamic Law and Society* 15/1 (2008b): 84–111.

The main source of the MFL that Israeli Shariʿa courts (and civil family courts) apply is the Ottoman Law of Family Rights (OLFR) of 1917. For matters not covered by the Ottoman Law (e.g. custody), qadis often resort to Egyptian jurist Qadri Pasha's nineteenth-century compilation of Islamic personal status law, and other commentaries on Hanafi jurisprudence. There is also a body of civil legislation that Shariʿa courts must take into consideration while making their decisions. These laws include the Women's Equal Rights Law (1951), Penal Law Amendment (Bigamy) Law (1959), and the Law of Legal Capacity and Guardianship (1962), among others. These secular laws, at least in principle, place certain penal sanctions and limitations on the interpretation of substantive MFLs. For instance, even though the OLFR allows it, a man cannot unilaterally divorce his wife against her will (*talaq*); neither can he contract a second marriage while still legally married. The Supreme Court of Israel (Beit Ha-Mishpat Ha-Elyon), sitting in its capacity as the High Court of Justice (HCJ) (Beit Mishpat Gavoah Le-Tzedek), is authorized to hear petitions regarding the competence and jurisdiction of Shariʿa courts. It reviews whether Shariʿa courts have correctly interpreted and applied relevant statutory laws, and overturns their decisions if found *ultra vires*.[6]

As a result of bilateral treaties signed between the Greek and Ottoman (later Turkish) governments in the late nineteenth and early twentieth centuries, Greece, to this day, continues to officially recognize the jurisdiction of three Muslim muftis in the Thrace region (one in Komotini, one in Xanthi, and a deputy mufti in Didymoteicho) to adjudicate family matters among Muslims in accordance with local usage and customs. Muftis are appointed and salaried by the Greek government and accorded adjudicative functions without necessarily establishing a hierarchical network of Shariʿa courts—à la Israel. There are no standardized or codified material, procedural laws, or rules of evidence that Greek muftis apply. Neither are any appeals permitted against decisions of the mufti.

The jurisdiction of the muftiate has long been deemed exclusive for Thracian Muslims. However, some Greek judges and legal scholars argue that Islamic jurisdiction should be considered optional or concurrent with civil courts—meaning that Muslims may (or should be able to) choose between civil courts

[6] Yehiel S. Kaplan, "Enforcement of Divorce Judgments in Jewish Courts in Israel: The Interaction between Religious and Constitutional Law," *Middle East Law and Governance* 4/1 (2012): 1–68; Ahmad Natour, "The Role of the Shariʿa Court of Appeals in Promoting the Status of Women in Islamic Law in a Non-Muslim State (Israel)," (JSD thesis, American University Washington College of Law, 2009); Moussa Abou Ramadan, "Islamic Legal Hybridity and Patriarchal Liberalism in the Shariʿa Courts in Israel," *Journal of Levantine Studies* 4/2 (2015): 39–67; Anat Scolnicov, "Religious Law, Religious Courts and Human Rights within Israeli Constitutional Structure," *International Journal of Constitutional Law* 4/4 (2006): 732–40.

and a mufti's jurisdiction with respect to their family matters.[7] Muftis' decisions cannot be implemented without an accompanying enforceability decree issued by the competent Court of First Instance (CoFI) (Monomeles Protodikeio). Technically speaking, the CoFI is authorized to review whether a mufti's decisions have been rendered within the limits of his jurisdiction and whether they have contravened the constitution.

The practice of MFL in both Israel and Greece is historically connected to the Ottoman *millet* system. In both cases, respective governments have largely retained MFLs for various political considerations post-independence. For instance, Israel has preserved a modified version of the old *millet* system (including Shariʿa courts) and utilized it as an instrument of vertical segmentation between Jews and non-Jews, and horizontal homogenization among the Jews.[8] Similarly, Greece retained the muftis' jurisdiction in Thrace to strengthen the Islamic identity of the Turkish-speaking population in the border region and insulate the minority against secular nationalist ideology of the Kemalist regime in neighboring Turkey.[9]

The preservation of Shariʿa rule was a strategic decision for both governments, and they have continuously maintained this outlook. For instance, even though they have enacted legislation restricting the jurisdiction of MFLs, regulating the appointment of qadis and muftis, or placing various restrictions (through penal sanctions) on Islamic divorce (*talaq*) and underage or polygynous marriages, they have refrained—particularly through executive or legislative means—from directly intervening in substantive MFLs. The reasons for this rather cautious approach to reforming Islamic law are threefold. First, given the history of thorny relations with their respective neighbors and internal ethno-religious tensions (Greek vs Turkish, Jewish vs Arab), both the Israeli and the Greek governments may have refrained from direct interventions in MFLs in order to avoid unnecessarily provoking domestic Muslim minorities and antagonizing the broader Muslim world (a serious concern for Greece in particular). Second, since the question of whether a non-Muslim government could legislate reform in MFLs is a controversial one, Israeli and Greek governments, lacking the necessary moral authority to confidently do so, may have simply decided against such a move.[10] Third, as many critics

[7] Kōnstantinos Tsitselikis, "Me Aphormē Tēn Apophasē 405/2000 Tou Monomelous Prōtodikeiou Thēbōn," *Nomiko Vima* 49 (2001): 583–93.

[8] Yüksel Sezgin, "The Israeli Millet System: Examining Legal Pluralism through Lenses of Nation-Building and Human Rights," *Israel Law Review* 43/3 (2010): 631–54.

[9] Yannis Ktistakis, *Hieros Nomos Tou Islam Kai Mousoulmanoi Hellēnes Polites: Metaxy Koinotismou Kai Phileleutherismou* (Athens and Thessalonica: Ekdoseis Sakkoula, 2006).

[10] Muhammad Khalid Masud, "Apostasy and Judicial Separation in British India," in *Islamic Legal Interpretation:* Muftis *and their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Morris Messick, and David Stephan Powers (Cambridge, MA: Harvard University Press, 1996), pp. 193–203.

suggest, perhaps neither the Israeli nor the Greek government was ever truly interested in social reform among their Muslim populations. As one Muslim female lawyer in Greece put it, rather cynically: "Why should the Greek government care about gender inequality in the Muslim community . . . Why would they bother reforming this archaic system? We are not equal citizens. We are not the state's concern!"[11]

Despite penal sanctions and prohibitions indirectly placed on application of MFLs by secular legislation in both countries, such practices as polygyny (albeit limited), *talaq* (unilateral, extrajudicial divorce), child marriages, proxy marriages, and gender-unequal inheritance, custody, and maintenance laws continue to exist and undermine the constitutionally and internationally protected fundamental rights and liberties of Muslim citizens (especially women and children).[12] In both countries it is not uncommon for a Muslim wife to be denied maintenance because she is deemed a "disobedient" wife, or for a divorced woman to lose custody of her minor-aged children when she remarries, or for a daughter to receive only half of her brother's share from her parents' inheritance.

When people encounter such systemic inequalities and come to view a particular forum as "unjust" or "unfavorable," they often start shopping between competing jurisdictions and legal regimes. Both the Israeli and the Greek legal systems allow Muslim litigants to choose between civil and religious laws and courts with respect to certain personal status matters. Moreover, Muslim litigants can also ask civil courts, when possible, to review and overturn the rulings of religious courts and authorities if they believe the religious authority violated the constitution, misinterpreted the law, or overstepped its jurisdiction. As a result, in both countries, the use of civil law and courts by Muslim litigants for family matters that historically fell under the purview of religious courts is on the rise. For instance, the secretary general of the Muftiate of Komotini reports that while the mufti issued about 185 inheritance (*faraiz*) fatwas per annum between 1964 and 1985, and 20 between 1985 and 2005, that yearly average has now fallen to 3–5.[13] This decline indicates that the majority of Thracian Muslims nowadays prefer to use civil law and courts for inheritance matters. Although there are no official statistics available, anecdotal evidence, and my interviews with various stakeholders,[14]

[11] Personal interview. Subject declined to be identified, Komotini, Greece, March 2015.

[12] CEDAW, "Concluding Comments of the Committee on the Elimination of Discrimination against Women: Greece," 2007, <http://www.isotita.gr/en/var/uploads/Greece_%20Concluding_comments_OHE.pdf>; Thomas Hammarberg, "Report by Commissioner for Human Rights of the Council of Europe," 2009, <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1409353>; Yüksel Sezgin, *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt and India* (Cambridge: Cambridge University Press, 2013).

[13] Personal interview with Mustafa Imamoglu, Komotini, Greece, March 2015.

[14] Phone interview with Heba Yazbak, April 2010.

suggest that the number of Israeli Muslims using civil family courts is also increasing—especially considering that, prior to 2001, the civil court option was not available to Muslims. For instance, during 2006–10, 66 percent of child custody cases, 22 percent of alimony cases, and 39 percent of child support cases lodged by Kayan, a feminist legal aid organization serving predominantly Arab women in Israel, were filed at civil family courts (Kayan 2011). In brief, in both countries, civil courts have become more involved with everyday regulation and application of MFLs, especially over the last decade.

In the remainder, I will trace the impact of the increased involvement of Israeli and Greek civil courts in the regulation of MFLs by looking at the respective Shariʿa jurisprudence delivered in each over the last three decades, and inquire whether such courts have functioned as viable agents of systemic legal change in Muslim laws by rendering these laws more compliant with the basic human and women's rights standards which lie at foundation of democratic rule.

ISRAELI CIVIL COURTS AND THEIR SHARIʿA JURISPRUDENCE

The High Court of Justice

As noted in the section "The MFL Establishments in Israel and Greece," decisions of Israeli Shariʿa courts are subject to review by the HCJ. In cases dealing with Shariʿa law, justices of the HCJ note in almost every judgment that their intervention is limited to cases involving *ultra vires*, infringement of the principles of natural justice (*ʿekronot tsedek tivʿi*), and disregard for binding statutory rules aimed at religious courts.[15] For instance, as early as 1955, in a Muslim custody case, the HCJ ruled that if a Shariʿa court confined itself to the religious law alone and disregarded the secular legislation that it was legally bound to apply, it would be acting *ultra vires*, and thereby its decision would have no effect under the law.[16] In the following decades, the HCJ continued holding Shariʿa courts responsible for the application of secular laws, and reminded them that it would strike down their rulings if statutory laws were ignored.[17] The first two generations of Israeli qadis had embraced a somewhat pragmatic approach toward the HCJ, often complying with secular laws to avoid any direct conflict with the civil judiciary.[18]

[15] For example, see: HCJ 8906/04, HCJ 1318/11, HCJ 11230/05, HCJ 5912/06, HCJ 473/09.

[16] HCJ 187/54. [17] For instance, see: HCJ 5227/97.

[18] Aharon Layish, "The Transformation of the Shariʿa from Jurists' Law to Statutory Law in the Contemporary Muslim World," *Die Welt des Islams* 44/1 (2004): 85–113; Natour, "The Role

However, the nature of the relationship between the HCJ and Islamic courts began to change in the 1990s. In the early 1990s, Israel experienced a "constitutional revolution." In 1992, the Knesset (Israeli parliament) enacted two Basic Laws dealing with fundamental rights and liberties.[19] Three years later, the HCJ, in a landmark ruling,[20] established its authority to conduct judicial reviews of any unconstitutional law enacted by the Knesset.[21] In this new era, the court began making increasing use of its entrenched powers to challenge the authority of religious courts and require them to apply the newly enacted Basic Law of Human Dignity and Liberty (1992) in order to ensure that individuals appearing before religious courts continue to enjoy their basic rights.[22]

Historically, in contrast to its review of rabbinical court decisions, the HCJ's review of Shari'a rulings have been more deferential.[23] The court, not feeling at ease in its role as "high interpreter of shari'a," had usually refrained from interfering with substantive aspects of Islamic law, particularly with respect to marriage and divorce.[24] In the post-1994 era, however, the court, while largely maintaining its policy of non-interference in marriage and divorce, began to take a more activist stance with respect to such matters as custody, paternity, and maintenance to promote and protect the rights of women and children. For instance, in a landmark case in 1995,[25] the HCJ granted a Muslim child

of the Shari'a Court of Appeals"; Yitzhak Reiter, "Qadis and the Implementation of Islamic Law in Present Day Israel," in *Islamic Law: Theory and Practice*, ed. R. Gleave and E. Kermeli (London: I.B. Tauris. 1997), pp. 205–31.

[19] Basic Law: Human Dignity and Liberty; Basic Law: Freedom of Occupation.

[20] HCJ C.A. 6892/93.

[21] Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Cambridge, MA: Harvard University Press, 2004); Gary Jeffrey Jacobsohn, "After the Revolution," *Israel Law Review* 34/2 (2000): 139–69; Gideon Sapir, "Constitutional Revolutions: Israel as a Case-Study," *International Journal of Law in Context* 5/4 (2009): 355–78.

[22] For instance, see: HCJ 3914/92, HCJ 1000/92. Also see: Ruth Halperin-Kaddari, "Expressions of Legal Pluralism in Israel: The Interaction between the High Court of Justice and Rabbinical Courts in Family Matters and Beyond," in *Jewish Family Law in the State of Israel*, ed. M. D. A. Freeman (Binghamton, NY: Global Publications, 2002), pp. 185–244.; Ran Hirschl, *Constitutional Theocracy* (Cambridge, MA: Harvard University Press, 2010); Kaplan, "Enforcement of Divorce Judgments in Jewish Courts in Israel"; Hanna Lerner, *Making Constitutions in Deeply Divided Societies* (Cambridge and New York: Cambridge University Press, 2011); Moussa Abou Ramadan, "The Transition from Tradition to Reform: The Shari'a Appeals Court Rulings on Child Custody (1992–2001)," *Fordham International Law Journal* 26 (2003): 595–655; Patricia J. Woods, *Judicial Power and National Politics: Courts and Gender in the Religious–Secular Conflict in Israel* (Albany, NY: SUNY Press, 2008).

[23] Josh Goodman, "Divine Judgment: Judicial Review of Religious Legal Systems in India and Israel," *Hastings International and Comparative Law Review* 32/2 (2009): 477–528.

[24] Alisa Rubin Peled, "Shari'a under Challenge: The Political History of Islamic Legal Institutions in Israel," *Middle East Journal* 63/2 (2009): 241–59; Moussa Abou Ramadan, "The Shari'a in Israel: Islamization, Israelization and the Invented Islamic Law," *UCLA Journal of Islamic and Near Eastern Law* 5 (2005–6): 81–129.

[25] For instance, see: HCJ C.A. 3077/90.

born out of wedlock civil paternity by bypassing the jurisdiction of Shariʿa courts, which had refused to grant the child religious paternity. The HCJ reasoned that the Basic Law of Human Dignity was the supreme law of the land (i.e. binding upon religious courts), and bestowed upon the child a fundamental right to know her filiation in order to fully enjoy her property, family, and human rights. Likewise, in a similar decision in 2013, the court declared that gender equality was an integral aspect of human dignity that was protected under the 1992 Basic Law, and that all state agencies, including Shariʿa courts, were obliged to abide by the principle of equality. This created a further obligation for qadis, justices argued, to seek more flexible and liberal interpretations of Shariʿa with an eye on gender equality: "If there is a school of thought [e.g. Hanafi, Hanbali, Shafiʿi, Maliki] that accepts the principle of equality, then religious courts should prefer it over schools of religious law that are inconsistent with this principle."[26]

The HCJ's increasing activism provoked a strong defensive reaction from the Shariʿa courts. For instance, Qadi Ahmad Natour, who served as the president of the SCA in 1994–2013, strongly opposed the HCJ's interventions and the implementation of secular legislations by Shariʿa courts. Upon his appointment in 1994, Qadi Natour swiftly moved to ban the application of all secular non-Shariʿa-based laws (including the Basic Laws)[27] by the Shariʿa courts.[28] Although on the surface the relations between the HCJ and Shariʿa courts have turned increasingly adversarial following the ban, the rhetoric and practice of confrontation gradually gave way to a new phase of dialectical transformations at Shariʿa courts, and of a symbiotic relationship between the civil and Islamic judiciaries.

In the face of the HCJ's growing interventions, the SCA embraced a defensive strategy in order to protect the jurisdiction of the Islamic judiciary. The new strategy, which may be called "subtle compliance," was to comply with the spirit of the secular law while publicly refusing to recognize it. In essence, the court has internalized and Islamicized the concepts derived from secular legislations to prevent future interventions into Shariʿa by the HCJ.[29]

[26] HCJ 3856/11. The HCJ repealed SCA 2011/28.

[27] In an interview that I conducted with him in January 2005 in Jerusalem, Qadi Natour expressed his objection to the implementation of the Knesset-passed laws by Shariʿa courts in the following words: "As shariʿa judges, I think that one of the most important duties that we have is to apply the shariʿa law, and try to make it pure shariʿa . . . not be involved with any particular Israeli law. . . . Shariʿa is part of our identity, character, our belonging, our root . . . If we apply the Israeli law . . . all of these will be [lost]."

[28] Layish, "The Transformation of the Shariʿa"; Natour, "The Role of the Shari`a Court of Appeals"; Ramadan, "The Shariʿa in Israel"; Ramadan, "Islamic Legal Hybridity; Iyad Zahalka, *Shari`ah Ba-`Idan Ha-Moderni: Ha-Halakhah La-Mi`Utim Ha-Muslemiyim* (Tel Aviv: Resling, 2014).

[29] Layish, "The Transformation of the Shariʿa"; Iyad Zahalka, "The Challenge of Administering Justice to an Islamic Minority Living in a Non-Moslem State: The Shariʿa Courts in Israel," *Journal of Levantine Studies* 2/2 (2012): 151–73.

From this point of view, principles such as "human dignity" and so on were no longer treated as secular impositions but as concepts integral to the Islamic tradition.[30] The subtle compliance was most visible in child custody cases.

The Legal Capacity and Guardianship Law of 1962 established "the best interests of the child principle" (*maslahat al-sagheer*) as the sole criterion in custody cases. Although the first two generations of qadis often based their custody (*hadana*) decisions on the 1962 law, the post-1994 leadership of Shariʿa courts prohibited—just like other secular laws—the application of said law by the Islamic judiciary. The SCA has repeatedly indicated in its judgments that the 1962 law was inferior to "noble" Shariʿa, hence it was not to be implemented by Islamic courts.[31] Despite its refusal to recognize the 1962 law, however, the court also claimed that, having "originated" in Islamic law, the principle of "the best interest of the child" was to be considered the guiding principle in custody cases.[32] By internalizing secular frames and references such as "the best interest of the child," the court mainly aimed to restrict the HCJ's interventions in its jurisdiction.[33]

Did the new strategy succeed in fending off further interventions by the HCJ? The answer is equivocal. It ultimately depends on whether, in a given case, the Shariʿa courts correctly interpreted, for instance, the best interest of the child principle, and whether they followed the procedure outlined in the civil law. According to Shariʿa law, apostasy results in a parent's loss of his or her children's custody. In two custody cases where the mothers reportedly converted from Islam to Christianity, the regional Shariʿa court in Haifa, claiming that the best interests of the children were to be raised in a Muslim environment, revoked the custody rights of the two mothers. Although the SCA upheld the Haifa court's rulings in both cases, the HCJ reversed both decisions, arguing that in both cases the religious court had failed to take into consideration the welfare officers' reports about the children's well-being, but instead based its decision solely on religious considerations.[34] In other words, even though the Shariʿa court employed the principle of the best interests of

[30] Natour, "The Role of the Shariʿa Court of Appeals"; Moussa Abou Ramadan, "Hitpahtehhoiut Ahronot Be-achzaqat Yeladim Be-Batei Ha-Din Ha-Sharayim; Beʿiqvoth Bagatz 9740/05 Plonit n. Beit Ha-Din Ha-Sharai Le-Irʿuriom, Bagatz 1129/06 Plonit ve-Ahi n. Ha-Din Ha-Sharai Le-Irʿuriom," *Mishpacha Be'Mishpat* 2 (2008a): 69–105; Iyad Zahalka, *Al-Murshid fi Al-Qada' Al-Shar'i* (Tel Aviv: Israel Bar Association, 2008).

[31] For instance, see: SCA 63/1994, SCA 135/1996, and SCA 127/1997.

[32] For instance, see: SCA 63/1994, SCA 15/1998, and SCA 56/1999.

[33] Moussa Abou Ramadan, "Hitpahtehhoiut Ahronot Be-achzaqat Yeladim Be-Batei Ha-Din Ha-Sharayim; Beʿiqvoth Bagatz 9740/05 Plonit n. Beit Ha-Din Ha-Sharai Le-Irʿuriom, Bagatz 1129/06 Plonit ve-Ahi n. Ha-Din Ha-Sharai Le-Irʿuriom," Mishpacha Be'Mishpat 2 (2008a): 69–105; Moussa Abou Ramadan, "The Recent Developments in Custody Law for Muslims in Israel: Gender and Religion," *Journal of Women of the Middle East and the Islamic World* 8 (2010): 274–316.

[34] HCJ 9740/05 and HCJ 1129/06.

the child, the HCJ rejected the court's religion-based interpretation of the principle, particularly in the absence of corresponding professional (read this as "secular") justification.[35]

Although the HCJ often reminds and orders religious courts to make custody decisions on secular considerations (rather than the religion or marital status of the parent) in accordance with the 1962 law, it also allows religious courts to invoke religious justification for their decisions as long as the decision in question complies with the procedural requirements and normative outcome the HCJ seeks to advance.[36] For instance, in one particular case concerning the Shariʿa court of Taibe,[37] which revoked custody rights of a mother due to her remarriage, the HCJ chose not to intervene because the decision was in consonance with the welfare officer's recommendation[38]—even though the Taibe court made its decision solely on religious considerations.

Israeli Shariʿa courts operate under pressure from three distinct groups and institutions: the feminists and the Islamists—both within the Muslim community—and the civil judiciary.[39] In response to challenges from these actors, Shariʿa courts have undergone a semi-voluntary process of dialectical transformation. They have simultaneously undertaken "Islamization" and "secularization" of their substantive laws and procedures.[40] The indirect role that the HCJ has played in this process cannot be denied. Its constant threat of intervention has forced the Shariʿa courts to internalize certain normative frames and concepts of civil law, and to amend their rules and procedures.[41] Qadis were more receptive to ideas and concepts (e.g. best interests of the child, human dignity) for which they could find a legitimate basis and justification in the Islamic tradition than merely secular concepts that could be interpreted as contradictory to the religious texts (e.g. gender equality). However, civil family courts, with which Shariʿa courts have been in direct competition over jurisdiction and clientele since 2001, have had an even greater impact than the HCJ in this reform process.

[35] Ramadan, "Islamic Legal Hybridity."

[36] In HCJ 9347/99, the HCJ upheld the ruling of the SCA that reversed the district Shariʿa court's decision denying a woman 80% of her dower in a divorce case. Even though the SCA based its decision solely on religious justifications rather than secular law, the HCJ chose not to intervene because the outcome was pursuant to the normative objective it sought to advance (e.g. women's equal rights).

[37] HCJ 8906/04.

[38] That giving custody to the mother would have jeopardized the well-being of the child as her stepfather was an abusive and violent man.

[39] Ido Shahar, "Legal Reform, Interpretive Communities and the Quest for Legitimacy: A Contextual Analysis of a Legal Circular," in *Law, Custom, and Statute in the Muslim World: Studies in Honor of Aharon Layish*, ed. Ron Shaham (Leiden: Brill, 2007), pp. 199–228.

[40] Natour, "The Role of the Shariʿa Court of Appeals"; Ramadan, "The Shariʿa in Israel"; Zahalka, "The Challenge of Administering Justice."

[41] Layish, "The Transformation of the Shariʿa."

Civil Family Courts

As mentioned in the section "The MFL Establishments in Israel and Greece," since 2001 Muslim litigants can choose between civil family and Shariʿa courts for any personal status matter except marriage and divorce. When deciding on these matters of concurrent jurisdiction (e.g. maintenance, child support, custody), however, both civil and religious judges need to apply the same material law. Where there is concurrent jurisdiction, there is always competition between the forums for clients, discursive power, and textual authority. This has also been true for the relationship between the Israeli Shariʿa and civil courts. In fact, the competition between the two court systems has been the driving engine of reform with regard to Israeli Shariʿa courts.

In this competition, Shariʿa courts enjoy a number of structural advantages over their civil counterparts. First, all judges at Shariʿa courts are Muslims who speak Arabic and are familiar with the culturally specific concerns of Muslim litigants. In family courts, nearly all judges are Hebrew-speaking Jews (at the time of writing there were only four Arab judges). Furthermore, family courts do not provide pro bono translation services for Arab citizens. Second, the conduct of proceedings and claim submissions are easier at Shariʿa courts. Moreover, the duration of proceedings are shorter at religious courts, where women are also granted automatic exemption from application and filing fees in alimony and child maintenance cases. In family courts, exemption requires an application along with supporting documents and an attorney's affidavit.[42]

What keeps family courts in the game, however, is their comparative advantage with respect to pecuniary awards. As shown in Table 7.1, spousal alimony and child support awards made by civil family courts are usually larger than those obtained in Shariʿa courts. This in itself, despite the accessibility issues mentioned in the previous paragraph, creates an incentive, particularly for female Muslim litigants, to choose civil family courts over Islamic courts. However, as my analysis of the emerging case law shows, the competition between the civil and Islamic courts has not been just about the clientele, but also the power to interpret the "divine" law.[43]

In maintenance cases, family court judges apply the OLFR as the source of Muslim substantive law—just like qadis. They also often cite relevant articles of Qadri Pasha's Code of Personal Status (especially in regard to child support,

[42] Kayan, "Five Years of Legal Aid: Summary and Analysis," 2011, <http://www.kayan.org.il/Public/ER20110101_5%20Year%20Legal%20Aid%20Report.pdf>.

[43] Pierre Bourdieu, "La Force du Droit: Eléments pour une Sociologie du Champ Juridique," *Actes de la Recherche en Sciences Sociales* 64 (1986): 4; Brinkley Morris Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993).

Table 7.1 Family Courts vs Shari'a Courts: Spousal Maintenance and Child Support Awards.

	Spousal Maintenance		Child Support	
	Duration of Proceedings (average)	Minimum/ Maximum Award	Duration of Proceedings (average)	Minimum/ Maximum Award (per child)
Family courts	N/A	NIS 1,100– NIS 1,800	11 months	NIS 1,200–NIS 1,600
Shari'a courts	N/A	NIS 1,000– NIS 1,500	4 months	NIS 700–NIS 1,300

Source: Based on the cases handled by Kayan between 2006 and 2010 (Kayan, 2011).

which is not included in the OLFR).[44] Jewish judges who are not trained in Arabic or Islamic law often rely on Hebrew textbooks and English sources on Muslim law for their decisions.[45] Judges at family courts have been familiar with the Jewish law because they have been applying it since 1953, whereas they started applying Muslim law only in 2001. Perhaps as a result of this legacy, in most Muslim personal status cases, judges (both Jewish and Muslim[46,47]) often draw parallels between Shari'a and *halakhah* in terms of spousal or parental obligations. One gets the sense that the Islamic law is interpreted through the lens of Jewish law in the Israeli family courts. However, it appears that, over the last decade, some Jewish judges have grown more familiar and comfortable with applying Islamic law. Some have moved beyond merely reproducing citations from textbooks to directly citing the Qur'an[48] and Hadith[49] of the Prophet Mohammad.[50]

Although some of the judges argue that they "interpret religious laws more liberally and adjust them to modern times,"[51] this usually does not go beyond

[44] Although neither text was officially translated into Hebrew, an unofficial translation of the OLFR exists in an oft-cited textbook by Shelomo Dov Goitein and A. Ben Shemesh, *Ha-Mishpat Ha-Muslemi Bi-Medinat Yisra'el* (Jerusalem: Mif'al ha-shikhpul; Geovilim, 1957).

[45] 1410-06 Hadera Family Court (2007); 11310-04-11 Nazareth Family Court (2012).

[46] 16411-08-10 Tiberia Family Court (2010); 1410-06 Hadera Family Court (2007).

[47] 791-08 Krayot Family Court (2008); 2881-03 Nazareth Family Court (2006).

[48] Surah Al-Talaq, Verse 6: "فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ" [And if they suckle your (offspring), give them their recompense]; and Surah Al-Baqarah, Verse 233: "وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ" [He shall bear the cost of their food and clothing on equitable terms]. Cited in 34258-07-13 Nazareth Family Court (2014).

[49] "خُذِي مَا يَكْفِيكِ وَوَلَدَكِ بِالْمَعْرُوفِ" [Take what is sufficient for you and your children, and the amount should be just and reasonable.], Sahih Bukhari, *Kitab al-Nafaqat*, cited in 34258-07-13 Nazareth Family Court (2014).

[50] The number of family court decisions citing the Qur'an has grown over the years: 2001–3: two decisions; 2003–5: two decisions; 2005–7: two decisions; 2007–9: two decisions; 2009–11: three decisions; 2011–13: five decisions; 2013–15 (May): six decisions.

[51] Email correspondence with Judge Assaf Zagury (March 7, 2013) (via the Office of the President of Supreme Court of Israel).

rhetoric.[52] On the contrary, my analysis of recent case law suggests that family courts, through their interpretation of Islamic law, actually sustain a conservative and "patriarchal" rhetoric about gender roles within the Muslim family. This becomes most apparent in family courts' interpretation of spousal maintenance rules.

The institution of *ihtibas* is considered the foundation of spousal duties and obligations in a Muslim marriage.[53] Judges often describe *ihtibas* as "the duty of the wife to devote herself to her husband, and being physically available to him."[54] *Ihtibas* is the quid pro quo of maintenance. They also note that a woman who leaves the marital residence without her husband's permission may be declared a disobedient wife (*nashiz*). A wife who is deemed disobedient can lose her right to maintenance. In all decisions dealing with *ihtibas*, it is also noted that the burden of proof is on the husband who accuses his wife of disobedience.[55] However, if she has already left the home, then it is her responsibility to prove that she did not violate her confinement obligation and that her departure was justified. However, as repeatedly indicated in various decisions, occasional violence by the husband is not automatically considered a just cause because Shari'a is said to, arguably, condone certain types of violence (e.g. "educational" violence, as opposed to "ongoing" violence).[56] For instance, in one family court judgment where a woman was declared a disobedient wife because she had left home due to her husband's alleged verbal assault, it was argued that since Islam even allowed the husband to "discipline" his wife by lightly beating her, verbal abuse alone could not be accepted as an excuse for violating the duty of confinement.[57]

A similarly conservative and patriarchal attitude is also observable in child support cases. According to Islamic law, maintenance of children is the sole responsibility of the father. The mother is never required to make financial contributions toward her children's maintenance, even if she is wealthy.[58] As far as the father's obligations toward his children are concerned, there are certain similarities between Islamic and Jewish laws: both discriminate against the father. Although family courts have challenged the inequality of Jewish child support laws,[59] they have turned a blind eye to analogous inequality in

[52] A good example of this rhetorical approach can be found in 2988-06-09 Tiberias Family Court (2011): "Like other personal laws, such as those applying to Jews and Christians, it is clear that Muslim family law is an archaic law which is based on the principles and rationales from earlier periods."

[53] 34258-07-13 Nazareth Family Court (2014).

[54] 1410-06 Hadera Family Court (2007).

[55] 1320/01 Hadera Family Court (2006).

[56] 34258-07-13 Nazareth Family Court (2014); 1410-06 Hadera Family Court (2007).

[57] 12810/06 Tel Aviv Family Court (2009).

[58] 1410-06 Hadera Family Court (2007).

[59] In this respect, it can be suggested that Jewish judges at civil courts tend to interpret Jewish law more liberally than orthodox *dayanim* at rabbinical courts. They have required Jewish

Islamic law and continued to hold Muslim men solely responsible for the cost of essential needs of their children, aged 18 and younger.

In brief, there has not been much difference in terms of applied Islamic law between Shari'a and civil family courts, as both systems seemed to have upheld an equally conservative and patriarchal outlook. When both courts operate within the same normative framework, but one of them systematically gives out larger child support and alimony awards, this obviously increases that court's attractiveness to potential litigants. This dynamic has been at the core of the competition between Shari'a and family courts over the last two decades.

The 2001 amendment that reduced the jurisdiction of Shari'a courts from exclusive to concurrent over matters of custody, maintenance, and child support was made possible by efforts of the Working Group for Equality in Personal Status Issues (WGEPSI)—a coalition of Israeli (Arab and Jewish) human and women's rights groups. The coalition was founded in 1995 and immediately began lobbying for a new law that would reduce the jurisdiction of religious courts. As Qadi Natour argues, the 2001 amendment was the most serious threat ever posed to the existence of the Muslim courts in Israel since the founding of the state.[60] Shari'a courts realized that they would lose their clientele, jurisdiction, and monopoly to interpret Islamic law to civil courts if they continued business as usual. In response, they initiated a process of self-reform and issued a new judicial decree (*marsoum qadai*) that aimed to increase the appeal of the courts to female litigants by raising the amount of child support and maintenance awards by means of procedural innovation. Prior to 1995, "shari'a courts never ordered a man to pay child support in an amount higher than 500 shekels per month," while this was the minimum amount ordered by civil courts for Jewish children.[61] Following the issuance of the new judicial decree, both child support and spousal maintenance awards by Shari'a courts were reported to have steadily increased.[62] Recent awards in published decisions are usually in the range of NIS 1,200–NIS 1,500 per month.[63] As commentators suggest, the process of reform was not just limited to maintenance; the fear of losing its jurisdiction motivated the Islamic judiciary to undertake other substantive and procedural reforms in various

mothers to make equal contributions to children's maintenance, especially for children older than 15 years of age. For instance, see: 35921-05-13 Nazareth Family Court (2015); 791–08 Krayot Family Court (2008).

[60] Personal interview with Ahmad Natour, Jerusalem, January 2005.

[61] Maha T. El-Taji, "Arab Local Authorities in Israel: Hamulas, Nationalism and Dilemmas of Social Change," (PhD thesis, University of Washington, 2008).

[62] Sezgin, *Human Rights under State-Enforced Religious Family Laws*.

[63] For instance, see: SCA 12/2013, 1233/2013 Haifa Shari'a Courts.

areas, including divorce, in order to increase their appeal and competitiveness vis-à-vis the civil judiciary.[64]

The present section has analyzed the Israeli HCJ and civil family courts' Shariʿa jurisprudence and such courts' indirect impact on the evolution and reformation of MFL. The next section, "Greek Civil Courts and their Shariʿa Jurisprudence," will do the same for Greek courts by closely analyzing the decisions of local courts of first instance in Western Thrace and the Court of Cassation (CoC) in Athens.

GREEK CIVIL COURTS AND THEIR SHARIʿA JURISPRUDENCE

According to Law 1920/1991, a Greek mufti is a religious leader who is also accorded judicial functions. The following matters, according to Article 5 § 2 of the law, fall under *ratione materiae* of the mufti: marriage, divorce, maintenance, custody, guardianship, wills, and inheritance disputes. In order to carry legal effect, the mufti's decisions have to be declared enforceable by the local CoFI. In the ratification process, the civil court will review the mufti's decision to ensure that it is within the bounds of his jurisdiction and conforms to the constitution. As noted in the section "The MFL Establishments in Israel and Greece," no direct appeals are permitted against muftis' decisions. The only—rather indirect—way to challenge them is to appeal against the enforceability decision of the CoFI at the court of appeals, and eventually at the CoC (Areios Pagos)—the court of last resort. These ratification and appeal stages are the two instances when Greek civil court judges—all non-Muslims—get to rule over various aspect of MFL.

Local Courts of First Instance

Can a mufti marry or divorce Greek Muslims not residing in his administrative district, or foreign Muslims temporarily residing in Greece? Such questions usually arise in the process of review and ratification of muftis' decisions by the local CoFI in Thrace. However, despite the clear provision in Article 5 §1 of Law 1920/1991, according to which the mufti can exercise jurisdiction only over Muslim Greek citizens residing in his region, there does not seem to be a clear consensus among Greek judges concerning muftis' territorial (*ratione loci*) or personal (*ratione personae*) jurisdiction. Some courts take a narrower view, others a broader one. In a landmark decision in 1980, the CoC ruled that Shariʿa law was applicable to all Greek Muslims regardless of their

[64] Moussa Abou Ramadan, "Divorce Reform in the Shariʿa Court of Appeals in Israel (1992–2003)," *Islamic Law and Society* 13/2 (2005): 242–74.

place of residence, with the exception of the Dodecanese.[65] In 2007, however, the CoFI in Xanthi ruled that the mufti had no jurisdiction to adjudicate a divorce involving a Muslim couple living just a few kilometers outside of his administrative region.[66] In a similar divorce case,[67] this time involving a Muslim couple from Athens, the CoFI in Rodopi took the opposite view and allowed the mufti to dissolve the couple's marriage.[68] Many contradictory rulings also exist with respect to the muftis' purview over non-Greek Muslims and non-Muslim Greek citizens (e.g. in mixed marriages).[69]

It is evident from the analysis of both first-instance and appellate-level court rulings that there is a great amount of ambiguity among Greek judges concerning muftis' jurisdiction. This lack of consensus is nowhere more apparent than in debates over whether a mufti's jurisdiction is compulsory for Muslim citizens. In a recent communiqué issued by the Minister of Justice, Antonis Roupakiotis, it was argued that a mufti's jurisdiction should be viewed as concurrent with ordinary courts, as viewing it as compulsory would violate the government's constitutional and international obligations to protect individual rights.[70] However, until recently, the majority of Greek courts have held that a mufti's jurisdiction was mandatory for Muslims residing within his district and have refused to hear pertinent family cases.[71] For example, in 2002, the CoFI in Rodopi ruled a Muslim custody petition inadmissible on the grounds that the dispute was between two Muslim citizens,[72] hence the jurisdiction had belonged to the mufti, not the civil courts.[73] Similar judgments closing the doors of civil courts to Muslim citizens were also issued with respect to marital property, parent–child communication, and adoption.[74]

Since the enactment of Law 1250/1982, Greek Muslims have been free to choose between civil and religious marriage. Family affairs of those who enter a civil marriage are governed by the Civil Code (CC) under the jurisdictions of secular courts. This ability to choose between secular and religious legal systems has been affirmed by both the government, as in the aforementioned communiqué, and the judiciary. For example, the CoFI in Xanthi declared, in an important ruling, that

[65] AP 1723/1980. [66] CoFI, Xanthi, 203/2007. [67] CoFI, Rodopi, 98/1997.

[68] Kōnstantinos Tsitselikis, *Old and New Islam in Greece: From Historical Minorities to Immigrant Newcomers*, *Studies in International Minority and Group Rights* (Leiden: Martinus Nijhoff, 2012).

[69] See: CoFI, Rodopi, 313/2009; Multimember CoFI, Rodopi, 18/2008; CoFI, Xanthi, 83/2004.

[70] Greek Parliament Question No: 5937/16-01-2013, <http://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/7938918.pdf>.

[71] Tsitselikis, *Old and New Islam in Greece*; Eleni Velivasaki, "Operating Religious Minority Legal Orders in Greece and in the UK: A Comparison of the Mufti Office in Komotini and the Islamic Shari'a Council in London," 2013, <https://www.unilu.ch/fileadmin/fakultaeten/rf/institute/zrv/dok/WP04-13-VELIVASAKI.pdf>.

[72] CoFI, Rodopi, 149/2002.

[73] Yannis Ktistakis, *Charia Tribunaux Religieux et Droit Grec* (Istanbul: Istos, 2013).

[74] AP 1723/1980; CoFI, Chalkis, 1057/2000; CoFI, Xanthi, 127/2000; Appeals Court of Thrace, 356/1995.

> inclusion of Greek citizens of Muslim religion and residents of Thrace within the exclusive competence of the mufti for family and inheritance matters, despite the conclusion of the civil marriage, will be held to infringe upon their freedom of religion . . . Their celebration of civil marriage implicitly indicates their desire not to be subject to the jurisdiction of the divine Muslim law, but the civil law, like other Greek citizens.[75]

It is now widely accepted that Muslims who marry civilly can opt out of muftis' jurisdiction.

But what about Muslims who marry in a religious ceremony? Can they also resort to civil courts for family disputes that may later arise? According to the CoFI in Thiva, the answer is affirmative. In a Muslim guardianship and paternity case in 2000, the court ruled that the mufti's jurisdiction—for all personal status matters listed in Article 5 § 2 of Law 1920/1991—should be deemed concurrent with ordinary courts. Especially in the event that the application of the "sacred" law would infringe upon basic rights protected under the constitution and the European Convention on Human Rights (ECHR), the court further argued, the state was required to give the members of the religious minority the option to choose between the jurisdiction of the mufti and of ordinary civil courts.[76] In 2008, the CoFI in Rodopi arrived at the same conclusion and claimed jurisdiction over inheritance disputes among Muslims in the name of gender equality and fair trial:

> The jurisdictional powers of the Mufti, which are clear from the letter and spirit of the Treaty of Lausanne . . . would not violate individual rights of Muslims, which are expressly protected both by the Constitution and the European Convention . . . According to the holy Muslim law (Qur'an) of inheritance, a male child receives twice the share of a female child . . . [We] cannot overlook the provision of Article 116 § 2 of the Constitution, which states inter alia that: " . . . the State shall ensure the elimination of inequalities in practice, particularly against women . . . " [Thus], with the above content, [the case] is admitted for trial before this court, which has jurisdiction with regard to the distribution of inherited property . . . of Greek citizens of Muslim religion.[77]

Greek civil courts have been historically very conservative in their dealings with Islamic law and muftis. There is an important reason for this: the legal autonomy of the muftiate was established and guaranteed by international treaties as part of a minority protection regime between Turkey and Greece based on the principle of reciprocity. From this point of view, questions concerning Islamic law were not just matters of legality, but also grave political concerns intimately tied to security policy, minority affairs, and bilateral

[75] CoFI, Xanthi, 1623/2003.
[76] CoFI, Thiva, 405/2000; for further information, see: Tsitselikis, "Me Aphormē Tēn Apophasē 405/2000 Tou Monomelous Prōtodikeiou Thēbōn."
[77] CoFI, Rodopi, 9/2008.

relations with Turkey.[78] In the late 1990s and early 2000s, Turkish–Greek relations entered into a new phase of détente as the European Union (EU) began accession negotiations with Turkey. At the same time, within the context of the EU's minority protection policies, the Greek government also took a number of steps to improve the socioeconomic status of Muslims in the Thrace region.[79] It is difficult to make a causal argument, yet it is no surprise that right around this time, as the preservation of Shari'a in Thrace was viewed as less of a geostrategic importance, some of the courts embraced a more assertive stance vis-à-vis the muftiate and Islamic law. As I explain in the section entitled "The Court of Cassation," although they did not necessarily begin challenging the constitutionality of Shari'a law, they adopted an increasingly restrictionist approach toward muftis' jurisdiction. In many cases they either refused to recognize muftis' jurisdiction or declared it concurrent with civil courts. For instance, in 2001, the Appeals Court of Thrace ruled that the setting of parent–child communications was not within the jurisdiction of the mufti and fell instead under the purview of civil courts.[80] The same court in 2006 also decided that spousal property relations were excluded from muftis' jurisdiction.[81] In 2008–11, in a series of judgments,[82] courts also ruled that child custody (*epimeleia*) was no longer under the jurisdictional competence of muftis[83]—often basing their decisions on a narrowed understanding of the concept of parental authority (*goniki merimna*).[84] Similarly, regional courts

[78] Alexes Alexandres, *The Greek Minority of Istanbul and Greek-Turkish Relations, 1918–1974* (Athens: Center for Asia Minor Studies, 1983); Baskin Oran, *Türk-Yunan Iliskilerinde Bati Trakya Sorunu* (Ankara: Mülkiyeliler Birligi Vakfi, 1986).

[79] Ioannis N. Grigoriadis, "On the Europeanization of Minority Rights Protection: Comparing the Cases of Greece and Turkey," *Mediterranean Politics* 13/1 (2008): 23–41; Fulya Memisoglu, "The European Union's Minority Rights Policy and Its Impact on the Development of Minority Rights Protection in Greece," 2007, <http://www.lse.ac.uk/europeanInstitute/research/hellenicObservatory/pdf/3rd_Symposium/PAPERS/MEMISOGLOU_FULYA.pdf>.

[80] Appeals Court of Thrace, 7/2001.

[81] Appeals Court of Thrace, 119/2006.

[82] CoFI, Rodopi, 11/2008, 17/2008, 130/2008, 140/2008, 183/2008; and CoFI, Xanthi, 24/2011.

[83] Like any other aspect of muftis' jurisdiction, there is no consensus among lower court judges concerning competence to adjudicate custody disputes, either. Despite the aforementioned rulings that removed custody from muftis' jurisdiction, some courts continue to recognize and ratify muftis' custody decisions. For instance, see: CoFI, Rodopi, 5/2014.

[84] Article 5 § 2 of Law 1920/1991, which defines muftis' jurisdiction, is a verbatim copy of Article 10 § 1 of Law 2345/1920, which included custody (*epimeleia*) within muftis' jurisdiction. *Epimeleia* was also employed in the CC that applied to non-Muslim citizens. However, Law 1329/1983, which reformed the CC, replaced custody (*epimeleia*) with a new child-centered and gender-egalitarian concept of parental authority (*goniki merimna*). Since then, the old concept of *epimeleia* has fallen out of usage and *goniki merimna* has become the main legal framework for regulation of parent–child relations within the civil judiciary. As a result, some civil court judges "narrowly" interpreting Article 5 § 2 of Law 1920/1991, which still invokes *epimeleia* (without due regard for the historical evolution of the concept), consider parent–child relations to be outside muftis' jurisdiction. George Doudos, "Syntomē Episkopēsē Tou Systēmatos Dikaiou Sharia Se Dialektikē Syzeuxē Me Tēn Ellēnikē Ennomē Taxē" (Unpublished paper, Thessaloniki, 2009 [on file with author]); Athina Kotzambasi. "Oikogeneiakes Ennomes Sxeseis Ellinōn Mosolmanōn," 2001, <http://kethi.gr/wp-content/uploads/2009/07/162_OIKOGENEIAKES_ENNOMES_SXESEIS.pdf>.

also excluded inheritance from muftis' jurisdiction, subjecting all Greek citizens to the purview of the CC, regardless of religion.[85]

The Court of Cassation

This rising assertiveness of the courts at the local level sparked a backlash from the CoC in Athens. The CoC has been historically very lenient in its decisions concerning Shari'a law. As Doudos notes, "High Court judges usually operate under various political pressures. Over time they become an extension of the state power as they embrace the official policy and increasingly reflect it on their decisions."[86] The official Greek policy on Shari'a rule in Thrace has been in favor of preserving the status quo.[87] This outlook has been also largely incorporated into the court's jurisprudence. For instance, in a series of judgments, especially concerning inheritance issues, the court has repeatedly noted that the application of Shari'a law in Western Thrace was an international treaty obligation; this bestowed upon Shari'a the status of a "special law" within the domestic system.[88] Given its special status, the court argued, Shari'a could not be said to contradict the constitution, the ECHR, or *ordre public*. Although the court did not formulate it in the same words as one of the local courts in Thrace, it still signaled to lower courts that when they were "confronted with questions about Islam, they must judge them as if they came from a different value system, not by criteria exclusive to Western societies."[89]

This essentialist perception of Islam and Shari'a was particularly visible in the court's jurisprudence on Islamic inheritance law. Most Thracian Muslims do not agree with Islamic succession rules (from a gender equality perspective) and bypass them by leaving notarized public wills (*dimosia diathiki*).[90] For instance, fathers often distribute their inheritance equally between their sons and daughters, even though, under Islamic law, a male heir's inheritance would be double that of female heir. However, relatives whose interests are threatened by the public will could always challenge its validity at a civil court and request redistribution in accordance with Shari'a law. Many such cases have come before the CoC—as the court of last resort—over the years.[91] The

[85] Appeals Court of Thrace, 439/2005, 642/2009, 392/2011, 192/2013; CoFI, Rodopi 50/2010; CoFI, Xanthi, 30/2010, 122/2002.

[86] Personal interview with George Doudos, Legal Counsel for Muftiate of Komotini, Komotini, Greece, March 2015.

[87] Bryan S. Turner and Berna Zengin Arslan, "Legal Pluralism and the Shari'a: A Comparison of Greece and Turkey," *Sociological Review* 62/3 (2014): 439–56.

[88] AP 1370/2014, 1862/2013, 1097/2007.

[89] Multimember CoFI, Xanthi, 11/2001, cited in Ktistakis, *Charia Tribanux Religieux et Droit Grec*.

[90] Turgay Cin, *Yunanistan'daki Türk Azinligin Hukuki Özerkligi* (Ankara: Orion, 2009).

[91] For instance, AP 322/1960, 2113/2009, 1097/2007.

court has consistently upheld muftis' jurisprudence over intestate and testate succession as compulsory and categorically rejected Muslim citizens' right to leave public wills, relying upon a patriarchal interpretation of Islamic law and neglecting local customs:[92]

> The basis of Islamic inheritance law is intestate succession, and "public will" does not have the same position [in Islamic law] that it has in Roman law-based modern systems. If there are relatives, a will cannot be utilized for devolution of inheritance. [The public will] solely complements the intestate succession, "what the Prophet [no specific hadith is cited] has ordered the faithful to do cannot be altered." . . . However, there are other provisions of the Qur'an [no specific verse is cited] urging the faithful to charity . . . Muslims, driven by the spirit of charity, may leave a will in favor of third parties up to 1/3 of their estate. Therefore, the will of a Muslim is a kind of simple legacy for a third party, not having the status of legal heir, for charitable and philanthropic purposes . . . Inheritance relations of Muslim Greeks are governed not by the CC but by the laws of *faraiz* over which the mufti has jurisdictional authority.[93]

As the CoFI in Xanthi ruled in 2012,[94] the application of Shari'a-based family laws, especially when people were subjected to the jurisdiction of the mufti against their wishes, violated Muslim citizens' constitutionally protected substantive and procedural rights, including equality before the law (Article 4§1) and freedom of conscience (Article 13). As per Article 5§3 of Law 1920/1991, the CoFI is supposed to review the constitutionality of muftis' decisions and declare them "unenforceable" if they find a contradiction. However, despite widespread alleged violations,[95] the CoC's policy of treating Shari'a as special law and exempting it from constitutional review seems to have also influenced and discouraged lower courts from conducting effective reviews of mufti decisions. According to Ktistakis,[96] during the period 1991–2011, three CoFIs in Thrace reviewed 3,633 mufti decisions,[97] and struck down only one of them as unconstitutional, on the grounds that the uneven distribution of inheritance by a mufti between a male and a female sibling (7/21 for girl,

[92] Christina Jones-Pauly and Abir Dajani Tuqan, *Women under Islam: Gender, Justice and the Politics of Islamic Law* (London: I.B. Tauris, 2011).

[93] AP 1497/2013, 1862/2013, 1097/2007, 2138/2013.

[94] CoFI, Xanthi, 102/2012, cited in Maria A. Bergou, "Ē Epharmogē Tou Ierou Mousoulmanikou Nomou (Saria) Stēn Ellēnikē Ennomē Taxē," 2013, <http://www.nsk.gov.gr/documents/15678/33709/722013.pdf/fe567b9a-c5e7-4a37-ac14-b1caec4e4b6a>.

[95] Stergios Kofinis, "The Status of Muslim Minority Women in Greece: Second Class European Citizens," in *European Union Non-Discrimination Law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination*, ed. Dagmar Schiek and Anna Lawson (Burlington, VT: Ashgate Publishing, 2011), pp. 125–40.

[96] Ktistakis, *Charia Tribanux Religieux et Droit Grec.*

[97] CoFIs in Rodopi, Xanthi, and Orestiada.

and 14/21 for boy) violated the constitutional principle of gender equality (Article 4§2).[98]

As evidenced, the constitutional review of muftis' decisions by civil courts is ineffective or non-existent. There are political and institutional reasons for this. Some institutional limitations that prevent civil courts from carrying out an effective review of muftis' decisions have already been mentioned: the strong discouragement by the CoC, the language barrier, the lack of Muslim judges in civil courts, the lack of codification of material and procedural rules of Islamic law, the lack of a proper Islamic court system, and the lack of oversight and appeal within the Islamic sector. The loose integration of the muftiate within the national legal system poses additional challenges to constitutional review. The fact that muftis are not professional career judges trained in civil law makes them less susceptive to institutional constraints (i.e. the cost of defiance is very low for the muftis) and less receptive to secular concepts and frames (e.g. liberal human rights discourses).

One can also add to this list the lack of tradition and historical precedents. Prior to the enactment of Law 1920/1991, muftis' decisions were not subject to constitutional review. By the time the new law was introduced, the issue of the muftis' appointment, duties, and jurisdiction had already grown into an international problem between Turkey and Greece. In other words, questions concerning muftis' jurisdiction were too politically sensitive for ordinary judges to handle, as they were directly linked to state security, foreign policy, and majority–minority relations. In 1990, when the Greek government appointed two new muftis in Komotini and Xanthi, the Muslim minority protested the appointments as "unlawful" (Law 2345/1920 required elections) and elected their own muftis. Since then, there have been two muftis in each city: one appointed and one elected. Elected muftis—who cannot function as judges—are considered by the minority as spiritual/political leaders, and by the Greek state as "Turkish agents," whereas appointed muftis—who can function as judges—are distrusted by the minority as "Greek agents." Against this backdrop, challenging the constitutionality of the state-appointed muftis' rulings would inevitably have political repercussions. Such court rulings could be interpreted as a symbolic support for groups who call for the abolition of the muftiate or separation of muftis' spiritual and judicial functions. The Greek state seeks to avoid both outcomes, as they would only increase international pressure (especially from Turkey) and create trouble for the government. Fully embracing this strategic foreign policy concern, the CoC

[98] CoFI, Rodopi, 152/1991. The CoFI remanded the case to the mufti of Komotini for retrial. The second ruling by the mufti was an exact copy of his first judgment; the only difference was that this time he did not mention numerical shares (e.g. 7/21, 14/21), but rather used the word "corresponding shares." When the new judgment was brought back to the court for ratification, it was declared enforceable with no reservations: Ktistakis, *Hieros Nomos Tou Islam Kai Mousoulmanoi Hellēnes Polites.*

has effectively discouraged local courts from limiting muftis' jurisdiction and challenging the constitutionality of their decisions.

Greece, a member of the Council of Europe, recognizes the jurisdiction of the ECHR. It means that Greek Muslims alleging violation of ECHR rights due to application of Islamic law could lodge a complaint at the Strasbourg court after exhausting domestic remedies. In some regards, the Strasbourg option provides an additional layer of human rights protection on top of the constitutional review mechanism put in place by Law 1920/1991. But does the ECHR play the role that national courts fail to play in providing an effective oversight over Islamic law and authorities in Greece? It is difficult to answer this question, as the Strasbourg option remains underutilized. To this day, only two cases concerning the implementation of Shari'a law in Thrace have been lodged at the court. The first case was *Dilek Cigdem v. Greece* (2010).[99] The applicant claimed that her rights under Articles 8 and 14 were violated when she was denied inheritance from her father under Islamic law on the grounds that she had been born out of wedlock.[100] The court rejected the application as inadmissible due to a procedural error by the applicant. The second case was *Chatitze Molla Sali v. Greece* (2014). The applicant complained that her rights under Articles 5, 6, and 14 had been violated due to the CoC's decision (1862/2013) to deny Muslim Greeks the right to make public wills, which deprived her of three-fourths of her property.

At the time of writing, the application was still pending. If the court rules that the original Greek decision violates the ECHR, it may have important implications for the mufti system in Thrace. The ECHR requires member states to remove legal grounds and practices causing violations.[101] If the court finds a violation in the pending case, the government could choose to respond by amending Article 5 of Law 1920/1991 and declaring muftis' jurisdiction concurrent with civil courts for all personal status matters; this could in turn create lateral pressure on muftis to self-reform in order to protect their jurisdiction and clientele, just as Shari'a courts did in the Israeli case. Thus, if sufficiently utilized, the Strasbourg court could ultimately be a source of reformist pressure on the Islamic judiciary in Thrace, a role that Greek courts have long failed to play.

In the absence of any serious threat to their clientele or judicial monopoly, muftis have not had any incentive to self-reform. On the contrary, the political climate has favored their existence and the status quo; high courts have shielded them against the lower courts' occasional incursions into their

[99] *Dilek Cigdem v. Greece* (22009/10), <http://www.strasbourgconsortium.org/portal.case.php?pageId=10#caseId=1212>.

[100] Appeals Court of Thrace, 497/2009.

[101] Ibrahim Ozden Kaboglu and Stylianos-Ioannis G. Koutnatzis, "The Reception Process in Greece and Turkey," in *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, ed. Helen Keller and Alec Stone Sweet (Oxford: Oxford University Press, 2008), pp. 451–529.

jurisdiction. There were practically no civil society organizations lobbying them for reform either. In the end, the lack of top-down, lateral, or bottom-up pressures allowed them to continue business as usual.

COMPARISON OF ISRAELI AND GREEK EXPERIENCES, AND CONCLUDING REMARKS

Civil courts and judges in non-Muslim countries cannot be expected to effect direct changes in MFLs, as they often lack the necessary moral authority. Their effect tends to be rather indirect, by pressuring religious courts and judges to undertake self-reform. This was true in Israel but not in Greece; Israeli civil courts were able to induce indirect reform (albeit limited) in Shari'a courts, whereas Greek civil courts failed to induce any reform in the Thracian muftiate.

Israeli Shari'a courts selectively and subtly complied with HCJ's rulings by internalizing civil discourses and principles that resonated with Islamic values. In addition to the HCJ's top-down pressure, Shari'a courts were also under lateral pressure from civil family courts. Jurisdictional competition with the latter was the driving engine of self-reform in Shari'a courts. In this respect, the 2001 amendment law that firmly established the concurrent jurisdiction of civil courts along with Shari'a courts was of critical importance.

In Israel, the HCJ and civil family courts worked in tandem. In Greece, on the other hand, this was not the case. There was neither top-down pressure by the CoC nor lateral pressure by the local CoFI. In hindsight, the role that the CoC played was highly unconstructive—especially in comparison to the Israeli HCJ. The CoC has not only avoided challenging the jurisdiction of muftis by requiring them to comply with the constitution or the ECHR, it has also effectively barred lower courts from putting any meaningful lateral pressure on muftis to reform. In Israel, the concurrent jurisdiction was guaranteed by the law. In Greece, however, it had to be established by judicial activism, particularly by the CoFI. The CoC has discouraged the lower courts from playing such a role despite their increasing assertiveness in the early 2000s. In the absence of meaningful vertical or lateral pressure from the civil judiciary, muftis defied calls for reform and refused to enact any substantive or procedural changes in the Islamic law.

In this respect, it should be noted that the cost of defiance was considerably lower for Greek muftis than for Israeli qadis. The latter, who were civilly trained and maintained professional ties with their civil counterparts, were more attentive to and dependent upon the judicial hierarchy than the former. Moreover, due to their training and professional ties, qadis were also more familiar with and receptive to constitutional values and certain secular frames,

and attributed greater legitimacy to some of them than did their Greek counterparts.

The relative success of the reform process in Israel also owed much to the existence of a vibrant non-governmental organization (NGO) sector—particularly women's rights groups. They constituted the third (bottom-up) source of pressure for qadis to undertake reforms. For instance, groups such as WGEPSI and Kayan played a pivotal role in the legislative process in 1995–2001 that opened the door to jurisdictional competition between civil and Shari'a courts. After the 2001 amendment, both groups provided legal aid to Arab women in order to help them to utilize the civil courts. The increase in the number of people using civil courts put greater pressure on Shari'a courts to self-reform. This bottom-up pressure, completely lacking in Greece, proved critical in the reform in Israel. Another element that was lacking in Greece was a reform-minded leadership at the apex of the Islamic judiciary. In comparison to Greek muftis, Qadi Natour, the former president of the SCA, was a highly effective, competent leader and a self-declared reformer, who spearheaded the reform and renewal process in the Shari'a system.[102]

Last but not least, another major difference between the two countries' experiences was the lack of a proper Islamic judiciary in Greece. The Islamic judiciary in Israel is more closely integrated into the national system than is the muftiate in Greece. In Israel, there are Shari'a courts; there are qadis; there is an SCA; and there are codified substantive/procedural laws. None of this exists in Greece. This absence makes it very difficult for civil courts to effectively review muftis' decisions and force compliance with the constitution or ECHR. Israeli civil court judges enjoy yet another advantage over their Greek counterparts. With the enactment of Laws 1250/1982 and 1329/1983, the Greek family law system has been almost completely secularized.[103] Thus, Greek judges, who are only familiar with secular law, often treat Shari'a as a sui generis law, not as an integral aspect of the national system. This ideological attitude is one of the reasons why the constitutional review of muftis' decisions has been ineffective. In Israel, on the other hand, the family law system is almost entirely religion-based. Religious laws and courts are an integral part of the national system. This makes Israeli judges, in comparison to their Greek counterparts, less biased and more receptive to MFLs. This does not mean that Israeli judges are more knowledgeable about Islamic law, but they may be more eager to treat Shari'a courts as part of the mainstream judiciary and, as a result, require them to comply with national norms and standards.

In the end, Israeli civil courts have played a more constructive role than their Greek counterparts in incentivizing the Islamic courts and judges to undertake

[102] Zahalka, "The Challenge of Administering Justice."

[103] Aspasia Tsaoussis-Hatzis, *The Greek Divorce Law Reform of 1983 and Its Impact on Homemakers: A Social and Economic Analysis* (Athens: Sakkoulas Publishers, 2003).

self-reform and make the application of MFL in that country relatively more human rights- and rule of law-compliant than the Shari'a system in Greece.

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8

Law, Gender, and Nation

Muslim Women and the Discontents of Legal Pluralism in India

Vrinda Narain

INTRODUCTION

The question of Muslim women's equality is of great importance in India, and resonates globally as pluralist democracies grapple with questions of minority rights, social diversity, women's equality, and democratic inclusion. Contemporary democratic politics and the value of multiculturalism have contributed to an understanding of pluralist democracy that attempts to value diversity and difference.[1] The Indian case offers a constructive lens through which we can consider these questions, and holds important lessons for other societies with multiple legal systems. While the Indian constitution guarantees equality to all citizens in the so-called public sphere, in the private sphere of the family, the state enforces explicitly discriminatory personal laws. As a result, Muslim women in India are subject to discriminatory personal law that regulates their status within the family and the community. Muslim women are unequal both as compared to Muslim men and as compared to other Indian women, and the state has created, in effect, a differentiated citizenship based both on gender and religious identity. The status of Muslim Indian women is defined in relation to an existing constitutional contradiction between "public" sphere

[1] Manish K. Thakur, "Democracy, Pluralism and the Religious Minorities: The Muslim Question in India," *Social Change* 43/4 (2013): 581, at 582; Vrinda Narain, "Critical Multiculturalism," in *Feminist Constitutionalism*, ed. Beverley Baines, Daphne Barak-Erez, and Tsvi Kahana (Cambridge: Cambridge University Press, 2010), pp. 377–92; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995); Rajeev Bhargava, Amiya Kumar Bagchi, and R. Sudarshan, eds., *Multiculturalism, Liberalism and Democracy* (Delhi: Oxford University Press, 2007); Anne Phillips, *Multiculturalism without Culture* (Princeton, NJ: Princeton University Press, 2007).

equality and "private" sphere inequality upheld by personal law.[2] Muslim women are unequal citizens of postcolonial India, disadvantaged both within the family as a result of personal law, and as compared to other Indian women in all other aspects of life: social, political, and economic.[3]

The postcolonial state's construction of democratic citizenship thus explicitly excludes Muslim women and is justified as "protecting minority rights." The contradictions inherent in the simultaneous existence of discriminatory Muslim personal law and constitutional equality guarantees pose serious challenges for Muslim women's equality in India. I suggest that an uncritical valorizing of personal law as demonstrating the successes of legal pluralism does not pay adequate attention to how such an understanding has legitimized Muslim women's inequality. Against this backdrop, the present chapter examines how the status of Muslim women in India is mediated by notions of secularism and the protection of minority rights, and evaluates the extent to which India's policy of legal pluralism and multiculturalism can forward Muslim women's equality.

The complexity of Muslim women's disadvantage is damaging to Indian democracy, demonstrating the link between the community's socioeconomic status and participation in political life.[4] Indian Muslim women have remained at the margins of public policy, indeed on the margins of democracy. Despite India's economic growth over the past few years, the Muslim community remains the most impoverished across India, with Muslim women among the poorest of the poor.[5] With regard to literacy rates, education,

[2] Vrinda Narain, "The Supreme Court of India and Maintenance for Muslim Women: Transformatory Jurisprudence," in *Routledge Handbook of Gender in South Asia*, ed. Leela Fernandes (New York: Routledge, 2014), pp. 97–114.

[3] Zoya Hasan, "Gender, Religion and Democratic Politics in India," *Third World Quarterly* 31/6 (2010): 939–54; see also Prime Minister's High Level Committee, *Social, Economic and Educational Status of the Muslim Community in India, 2006*, Justice R. Sachar, Chairperson (New Delhi: IGPS), 151–7, available at <http://mhrd.gov.in/sites/upload_files/mhrd/files/sachar_comm.pdf>; Sreevidya Kalaramadam, "Dis/empowering Political Subjects: The Production of 'Failed' Elected Women Representatives in India," *Women's Studies International Forum* 35 (2012): 276–85.

[4] Vasu Mohan and Suraiya Tabassum, "The Inclusion of Muslim Women in Indian Democratic Governance Structures and Processes," in International IDEA, *Journeys from Exclusion to Inclusion: Marginalized Women's Successes in Overcoming Political Exclusion* (Stockholm: International IDEA, 2013), pp. 199–233, at 202, and Sachar Report, supra note 3 at 163.

[5] Over 300 million Indians live on less than USD 1 per day and 84 per cent of Muslims live on less than 50 cents per day, Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, National Commission for Enterprises in the Unorganised Sector, New Delhi, 2007, p. 8 (website: nceuis.nic.in); <http://dcmsme.gov.in/Condition_of_workers_sep_2007.pdf>. See also Mohan and Tabassum, "The Inclusion of Muslim Women in Indian Democratic Governance Structures and Processes," pp. 199–233, at 202; Zoya Hasan and R. Menon, *Unequal Citizenship: A Study of Muslim Women in India* (New Delhi: Oxford University Press, 2004), pp. 76–7, 237, 241.

workforce participation, employment, and access to credit, the situation of Muslim women is disturbingly precarious.[6] Not surprisingly, while political participation as well as representation of Muslims in India remains low, with their representation in the lower house of Parliament at just over 4 percent, political representation of Muslim women is even lower. In the most recent 2014 figures, there were only 22 Muslim MPs in the lower house, and only 3 Muslim women out of 545 MPs. In some years there have been no Muslim women at all.[7]

THE LEGAL FRAMEWORK

In addition to minority rights and religious freedom, equality and freedom from discrimination on the basis, inter alia, of gender or religion are guaranteed to all citizens in the Indian constitution,[8] whose drafters sought to redress the sharp inequalities in the country by enshrining equality as a fundamental organizing principle.[9] Aware of the need for substantive equality, the constitution drafters sought legal reform, particularly for women and oppressed

[6] Hasan and Menon, *Unequal Citizenship*, p. 48.

[7] Rajeev Bhargava, "On the Persistent Political Under-Representation of Muslims in India," *Law and Ethics of Human Rights* 1/1 (2007): 76–133; *The Hindu*, May 17, 2014; "Muslim Women in Indian Politics", *India Tomorrow*, November 4, 2014.

[8] The Constitution of India, 1950, arts. 14–16 [hereafter *Constitution*] ("[Article] 14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. [Article] 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the State from making any special provision for women and children. (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. (5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30. [Article] 16. Equality of opportunity in matters of public employment.—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State").

[9] See e.g. *Gaurav Jain v Union of India*, AIR 1997 SC 3021 ("The Preamble, an integral part of the Constitution, pledges to secure 'socio-economic justice' to all its citizens . . . in a united and integrated Bharat.").

castes.[10] Despite opposition from several members of the constituent assembly, the postcolonial state, conscious of the need to reform religious laws to redress women's inequality, took on the authority to regulate religion.[11] The constitution drafters recognized that personal laws perpetuated women's inequality and inserted Article 44, calling for the enactment of a uniform civil code (UCC).[12] However, Article 44 is not a justiciable fundamental right, but a directive principle of state policy. While such principles are critical in governance and in formulating public policy, the state has not initiated a UCC for fear of alienating minority allegiance to the secular nation-state.[13]

Muslim personal law was maintained as a sphere of authority for religious leaders, exempt from the nation's wider constitutional requirements, as a demonstration of the postcolonial state's commitment to minority rights. This incongruence between constitutional requirements and Muslim personal law was premised on the public/private split and a religious/secular binary that has had profound implications for Muslim women, who are now subject to greater patriarchal authority and effectively abandoned by the state.[14] The personal law system stands in sharp contrast to the ideal of universal equal citizenship. Personal laws are the only laws that apply to individuals on the basis of their religious identity. Muslim women do not enjoy the same rights and privileges as Muslim men, or indeed other Indian women, in virtually any aspect of family law.

Although all religious personal laws disadvantage women, Muslim personal law has not been reformed to address women's inequality, while Hindu and Christian personal law have been reformed to address the most egregious of these inequities. The only postcolonial change has been the Muslim Women's (Protection of Rights on Divorce) Act (MWA), which was bitterly opposed by Muslim progressives and reformists, as well as feminists.[15] Muslim personal law has been preserved free from any progressive change to address women's precarious position on the understanding that women's equality stands in opposition to minority rights and religious freedom.[16] While the state has refused to initiate legal reform, arguing that change must come from within the group, religious leaders have resisted calls for internal reform, in particular from Muslim women.[17] They view a potential UCC as well as any law reform

[10] Ibid.

[11] I refer here to the executive and the judiciary. A Parashar, *Women and Family Law Reform in India* (New Delhi: Sage, 1992), p. 225; J. D. M. Derrett, *Religion, Law and the State in India* (New Delhi: Oxford University Press, 1968), p. 451; Vrinda Narain, *Gender and Community: Muslim Women's Rights in India* (Toronto: University of Toronto Press, 2001), p. 64.

[12] *Constitution*, art. 44.

[13] Vrinda Narain, *Reclaiming the Nation: Muslim Women and the Law in India* (Toronto: University of Toronto Press, 2008), pp. 144–5.

[14] Narain, "Supreme Court," 101.

[15] For a detailed account of the passage of the MWA, see Narain, *Gender and Community*.

[16] Narain, *Gender and Community*, p. 5.

[17] Narain, *Gender and Community*, pp. 89–91.

as state intrusion into their private sphere of autonomy.[18] The state, by unquestioningly accepting the equivalence of Muslim group identity with the unreformed personal law, has neglected women's equality in the mistaken understanding that this is an affirmation of group life. Muslim women's claims for change have been excluded from the democratic dialogue, while conservative religious leaders have been privileged as the sole definers of group identity and interests.[19]

India's explicitly discriminatory system of personal law, in contrast to formal constitutional guarantees of equality and the resultant contradictions between public formal equality and private discrimination, is a compelling demonstration of the state's reluctance to uphold gender equality when it is presumed to conflict with group interests.[20] The state is committed to a policy of secularism in the so-called public sphere, but refuses to reform personal laws in the so-called private sphere, using specious arguments of secularism, cultural autonomy, and its commitment to minority rights, even when these laws conflict with constitutional guarantees. The public–private dichotomy is thus superimposed onto the religious–secular binary. Simultaneously included and excluded from equal citizenship, Muslim women face discrimination within the family in the private sphere and are unable to call on the state's constitutional guarantee of equality. The state's refusal to regulate personal law, as a demonstration of its commitment to upholding Muslim group rights, has created a differentiated citizenship whereby the state has differing obligations and duties to citizens based on their gender and religion.[21]

The private subjugation of Muslim women is part of the public agenda, made explicit by the state's reaffirmation of the public–private dichotomy.[22] Catharine MacKinnon notes that "As a legal doctrine, privacy has become the affirmative triumph of the state's abdication of women."[23] The "doctrine of privacy" and the state's upholding of personal law serve to absolve the state of its constitutional responsibility to uphold equality for Muslim women, while allowing the *Ulema* to consolidate their authority. As MacKinnon points out:

> Family law keeps a lot of women in place and in line, fearful of altering their lives because of how it could be made to look in court . . . The realm in which women's everyday life is lived, the setting for many of these daily atrocities, is termed the private. Law defines the private as where the law is not, that into which the law does not intrude, where no harm is done other than by law's presence.[24]

[18] Narain, *Gender and Community*, pp. 89–91. [19] Narain, "Supreme Court," p. 101.

[20] Vrinda Narain, "Muslim Women's Equality in India," *Human Rights Quarterly* 35/1 (2013): 91–115, at 95.

[21] Narain, *Reclaiming*, pp. 78, 93, 97. [22] Narain, "Muslim Women," p. 103.

[23] Catharine A. MacKinnon, "Reflections on Law in the Everyday Life of Women," in *Law in Everyday Life*, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor, MI: University of Michigan Press, 1993), pp. 109–22, at 117–18.

[24] Ibid., pp. 116–17.

While it is not within the scope of this chapter to discuss the politics of the UCC, the issue of Muslim personal law reform raises questions about the state's commitment to minority rights, women's equality rights, and equal citizenship. Although, historically, the women's movement had demanded the enactment of a UCC to end inequality among Indian women, the politics of the *Shah Bano* controversy resulted in a shift in this position,[25] as feminists found themselves supporting a position dangerously close the Hindu Right, albeit for opposing reasons. While the feminist movement demanded a UCC as a way to end women's inequality across all personal laws, the Hindu Right supported it as a way to erase minority rights through the suppression of difference.[26]

The controversy over Muslim women's rights erupted with the landmark 1985 Supreme Court decision in *Shah Bano*, awarding maintenance under the secular law to Shah Bano, and the subsequent enactment of the MWA, 1986. This decision over spousal support caused a constitutional crisis, raising questions of gender equality, minority rights, and the relationship between secular and religious law. It brought into sharp relief the paradox of multicultural vulnerability for Muslim women, caught between the state and the *Ulema*.[27] Briefly, the facts of the case are as follows. Shah Bano was a 73-year-old Muslim woman who was divorced by her husband when she sought maintenance under the general or secular law of maintenance, Section 125 of the criminal procedure code. The lower courts awarded maintenance to Shah Bano but the case reached India's Supreme Court when her husband appealed against the High Court's award of maintenance. Mohammed Ahmed Khan contended that, as a Muslim, he was not subject to the secular law of maintenance, and that Muslim personal law did not require him to comply with the court order for support. He claimed that, as a Muslim, he was not required to pay maintenance beyond the forty-day *iddat* period, which he had already paid.[28] The court disagreed and ruled in Shah Bano's favor, asserting that the social welfare purpose of the code's provisions outweighed any arguments based on religious law.[29] The court went on to state that, since Muslim personal law discriminated against women, it was incumbent on the government to reform laws so that women of all religious faiths were governed equitably.[30] The court voiced its disapproval that the government had done little to ensure equality in family law by refusing to initiate a UCC for all citizens irrespective of religious identity.[31]

[25] *Mohammed Ahmed Khan v Shah Bano Begum*, 1985 2 SCC 556, [1985] AIR 1985 SC 945 (India) [hereafter *Shah Bano*]; Narain, *Gender and Community*, pp. 93–4.

[26] Narain, "Supreme Court," 101.

[27] Narain, *Reclaiming*, p. 9.

[28] The court of first instance awarded Shah Bano a sum of 25 rupees per month. The High Court of Madhya Pradesh then increased the amount of maintenance to 179.20 rupees per month.

[29] *Shah Bano*, p. 948.

[30] Ibid., p. 965.

[31] Ibid., p. 950.

Religious leaders reacted furiously to the Supreme Court's decision, and insisted that the government enact the Muslim Women's Act (MWA) to counteract the Supreme Court. They prevailed upon the government to exclude Muslim women from the code's purview, ignoring the strenuous objections of Muslim women's groups and civil society activists.[32] Giving in to pressure, while justifying its action as in conformity with secularism and its commitment to protecting group rights, the government enacted this new law, making it the first legislative initiative concerning Muslim personal law in postcolonial India. Far from rectifying the precarious vulnerabilities of Muslim women in the face of divorce, the MWA reaffirmed Muslim men's right to unregulated divorce, absolved them of the duty of spousal support, and, in so doing, stripped Muslim women of previously held rights, rights held by all Indian women.[33] The state and community leaders lost the opportunity to address Muslim women's disadvantages, instead using this political moment to further circumscribe their rights and entitlements. Moving Muslim women farther away from equal citizenship, imposing stricter patriarchal community control over them, and denying them rights available to all other Indian women, this law underscores the precarious position of Muslim women.

Further underscoring the specific location of Muslim women along multiple axes of discrimination and increasing the difficulty of challenging inequality

[32] For a detailed account of the *Shah Bano* case and the subsequent enactment of the MWA, please see Narain, *Gender and Community*.

[33] Narain, *Reclaiming*, pp. 13–18. Section 4 of the MWA provides that "Order for payment of maintenance.—(1) Notwithstanding anything contained in the foregoing provisions of this Act, or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property upon her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives, and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order: Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her: Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the grounds of not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order. (2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate to be paid, the Magistrate may by order, direct the State Wakf Board established under section 9 of the *Wakf Act*, 1954, or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such relatives who are unable to pay, at such periods as he may specify in his order."

within the Muslim community for fear of feeding into anti-Muslim forces, the Hindu Right has strategically (mis)appropriated the issue of the UCC to single out the Muslim community as backward and thus justify the denial of minority rights. The recognition that the Hindu Right promotes a UCC as a way to erase minority difference has led feminists to move away from the demand for a UCC toward reform of specific laws which would benefit all Indian women.[34]

The postcolonial Indian state, together with religious leaders of the Muslim community itself, has ignored Muslim women's claims to equality.[35] And yet India's constitutional framework provides for the powerful application of substantive equality principles.[36] While embracing substantive equality in the "public" sphere, the judiciary has reinforced gender stereotypes with regard to family law rather than challenging them, thus limiting the possibility of transformative change.[37] Indeed, while the judiciary compelled a reluctant state executive to enforce gender equality in the public sphere, the Supreme Court has not made similar efforts in the realm of personal law,[38] preferring to leave these questions, particularly the constitutionality of Muslim personal law, to the legislature.

The state, for its part, upholds Muslim personal law on the basis of the protection of minority rights, arguing that reform must be sought from within.[39] Conservative religious leaders argue that family law is divine and immutable, and thus unfit for reform. Yet religious law is not static: it is fluid and changes over time, even within religious traditions that insist on the immutability of divine law. Given the important impact of religious laws on women's equality, the need to formulate legislative and public policy approaches to address such conflicts is critical.[40]

[34] Such as the Protection of Women from Domestic Violence Act, 2005 (Act No. 43 of 2005), and the latest move to regulate the division of marital property upon divorce via the Marriage (Amendment) Bill that seeks to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. For a detailed discussion of this issue, see Srimati Basu, "The Personal and the Political: Indian Women and Inheritance Law," in *Religion and Personal Law in Secular India: A Call to Judgment*, ed. Gerald James Larson (Bloomington, IN: Indiana University Press, 2001), pp. 163–83, at 179; Rajeswari Sunder Rajan, *The Scandal of the State: Women, Law and Citizenship in Postcolonial India* (Durham, NC: Duke University Press, 2003), p. 148; Maitrayee Chaudhuri, "Feminism in India: The Tale and Its Telling," *Revue Tiers Monde* 209 (2012): 19–36, at 32; and Hasan, "Gender, Religion," 947.

[35] Hasan, "Gender, Religion," 941–2.

[36] Catherine A. MacKinnon, "Sex Equality under the Constitution of India: Problems, Prospects and 'Personal Laws'," *International Journal of Constitutional Law* 4/2 (2006): 181–202, at 187.

[37] Ratna Kapur and Brenda Cossman, *Subversive Sites* (New Delhi: Sage, 2004), pp. 61–2, 70.

[38] See, for example, *Vishaka v State of Rajasthan*, AIR 1997 SC 3011 (India).

[39] Zoya Hasan, "Minority Identity, State Policy and Political Process," in *Forging Identities: Gender, Communities and State in India*, ed. Zoya Hasan (New Delhi: Kali for Women, 1994), pp. 59–73, at 60–1.

[40] Narain, "Muslim Women," 104.

Governments have been reluctant to initiate the reform of religious personal laws for fear of an electoral backlash.[41] Electoral calculations by governments in power pander to majoritarian politics within minorities, as invariably the claims of culture are pitted against women's equality. Within this complex negotiation, raising questions of group identity and representation, the possibility of reform is politically fraught. This persistent refusal to address Muslim women's disadvantage, while simultaneously reinforcing patriarchal structures of authority, forces a re-examination of legal pluralism and its impact on minority women.

LEGAL PLURALISM AND ITS DISCONTENTS

The question of Muslim women's legal status in India has been the subject of much scholarly attention. As well, the question of India's commitment to pluralism and democracy has been debated and discussed.[42] In recent times, scholars have critiqued Indian democracy and India's crisis of secularism where minority rights are seen to be imperiled. With a Hindu Right national government in power since 2014, these questions are even more urgent, as minority anxiety increases in the face of the government's legitimization of Hindu hostility.

With the publication of two reports, scathing indictments of the state's failure to address Muslim inequality, the *Report of the Prime Minister's High Level Committee on Social, Economic and Educational Status of the Muslim Community of India*, popularly known as the Sachar Committee Report (Government of India, 2006),[43] and the *Report of the National Commission for Religious and Linguistic Minorities*,[44] popularly known as the Justice Ranganath Misra Commission Report (Government of India, 2007), the issue of Muslim women's marginalization has gained public prominence. Scholars of Indian democracy have noted that these reports have underscored the failure of public policy to address structural inequality and systemic

[41] Sunil Khilnani, Vikram Raghavan, and Arun K. Thiruvengadam, "Reviving South Asian Comparative Constitutionalism," in *Comparative Constitutionalism in South Asia*, ed. Sunil Khilnani, Vikram Raghavan, and Arun K. Thiruvengadam (New Delhi: Oxford University Press, 2013), pp. 1–22, at 19.

[42] Thakur, "Democracy, Pluralism and the Religious Minorities."

[43] Government of India, *Social, Economic and Educational Status, of the Muslim Community: A Report* (New Delhi: Prime Minister's High Level Committee, Ministry of Minority Affairs, Government of India, 2006). See footnote 3.

[44] Ministry of Minority Affairs, *Report of the National Commission for Religious and Linguistic Minorities* (New Delhi: Government of India, 2007).

discrimination, and have provided empirical data to show that the state's focus on cultural difference to the exclusion of structural inequality has failed Indian Muslims.[45]

The Sachar Committee Report highlights this problem and faults the state for neglecting all social, economic, and political aspects of inequality experienced by Muslims across India. Muslim women in particular have been deeply disadvantaged by a state that acquiesces in their subordination by accepting Muslim personal law as the defining feature of Muslim group identity, ignoring the fact that women are subordinated by patriarchal interpretations of religious norms. The postcolonial state premised its policy of multiculturalism and legal pluralism on cultural difference while neglecting more crucial questions of structural inequality.

In the context of Muslim women's legal inequality, it is now clear that there can be no uncritical ideological endorsement of non-state law, particularly given the concern of feminist multiculturalism scholars. Legal pluralism, as understood in India in the context of religious personal law, casts women's equality rights as oppositional to group solidarity. This understanding of legal pluralism clearly has profound implications for the status of Muslim women, their inclusion in democratic dialogues, and their equal citizenship. Moreover, it raises questions of representation and agency.

In postcolonial India, pluralism can be seen as a form of governmentality understood as managing difference based on religious status, which set up elite, male religious leaders as group representatives in control over group membership and with authority over women and minorities within the group. As a result, religious orthodoxy became fully entrenched within the autonomous private sphere, free from public scrutiny of the state. The secular bargain ironically put Muslim women even more firmly under religious patriarchal control.[46] The construction of personal law as a sphere of autonomy free from judicial regulation, state control, or constitutional conformity was more than simply an accommodation of difference—it was a cynical political move that also resulted in rigidifying and reifying difference along gendered hierarchical lines, subordinating women, and perpetuating their subordination as an integral part of religious belief/faith. The consequences for equal citizenship in general and Muslim women's equality in particular have been profound.

In this context, it is necessary to understand religious status-based legal pluralism in the frame of competing jurisdictional politics and struggles over power rather than simply in terms of accommodating diverse normative

[45] Thakur, "Democracy, Pluralism and the Religious Minorities."

[46] Karen Barkey, *Empires of Difference: The Ottomans in Comparative Perspective* (New York: Cambridge University Press, 2008).

orders.[47] Legal pluralism in India was the outcome of colonial state policy, a policy of the imperial project that was continued by the postcolonial state as a political compromise to secure minority allegiance to the postcolonial nationalist ideology. The existence of the personal law system is an illustration of a type of legal pluralism that is complex—it is the existence of a normative diversity that is both state and non-state to the extent that the state enforces norms that are outside of the constitutional order, exempting religious minorities from the application of the rules and norms of the wider society and also from its constitutional requirements.

In the name of preserving minority identity and upholding India's pluralism and multiculturalism, the state justifies discriminatory Muslim personal law, thereby equating the subordination of women with the interests of secularism. In turn, religious leaders, intent on preserving their control over the community, adamantly oppose reforming the personal law to enlarge women's rights, positing women's inequality as an aspect of the true interpretation of religion. Thus, in the name of secularism, state neutrality, and the protection of minority rights, Muslim women's inequality continues to be legitimized, debated, and located within these two patriarchies: the secular, democratic state and the conservative religious leaders, the *Ulema*.

Pitting secularism, state neutrality, and minority rights as oppositional to Muslim women's equality rights frames the debate along a single axis, to the disadvantage of Muslim women.[48] This has had profound implications for Muslim women who experience discrimination along multiple axes and have to contend with the community and the state that define identity along religious lines. This single-politics framing, which is focused on the cultural difference of Muslims rather than on their structural inequality, has two major consequences. First, it absolves the state of any responsibility to tackle questions of systemic discrimination, such as the inequality of Muslims, and in particular of Muslim women, in education, literacy, employment, labor force participation, access to microcredit and microfinance, housing, sanitation, and so on. Second, it simultaneously absolves Muslim community leaders from addressing Muslim women's inequality within the community, as it immunizes the personal law from reform and buttresses community control over Muslim women.

DOUBLE PATRIARCHY

The limits of political liberalism with regard to the question of Muslim women's equality are illustrated in the postcolonial Indian formulation of

[47] Mitra Sharafi, "Justice in Many Rooms since Galanter: De-Romanticizing Cultural Pluralism through the Cultural Defense," *Law and Contemporary Problems* 71 (2008): 139–46.

[48] Sirma Bilge, "Beyond Subordination vs. Resistance: An Intersectional Approach to the Agency of Veiled Muslim Women," *Journal of Intercultural Studies* 31/1 (2010): 9–28, at 10.

citizenship, drawn from a liberal understanding. In this understanding, where the religious/secular binary is superimposed on the public/private dichotomy, equality in the public sphere is seen as sufficient. Any inequality in the private sphere is not seen as incompatible with liberal democracy and equal citizenship in the public sphere. Thus, inequality in the private sphere, including gender inequality in the family, is tolerated, as it is seen to be a consequence of voluntary adherence to religious faith. In contrast, however, feminists would require a thicker account of equality with a greater commitment to gender equality. Such an understanding of citizenship and pluralism and the upholding of minority rights should be problematized because it perpetuates women's subordination within minority communities. To this extent then, this kind of legal pluralism is simply one of jurisdictional power and authority sharing between the state and religious leaders. Arguably, the mere recognition of multiple groups as an expression of the state's commitment to protecting minority rights is not sufficient to sustain a robust democracy. At the same time, the limits of multiculturalism are revealed, whereby intergroup equality is limited by the lack of intragroup equality. These are complex issues, but at the very least they force a reassessment of the relationship between recognition and redistribution, cultural difference and structural inequality, and its impact on those most vulnerable within minority groups.

For Muslim women in India, the state's understanding of citizenship arguably excludes an acknowledgment of the multiple axes of discrimination experienced by Muslim women. Sirma Bilge notes that the single-perspective politics that frames the exclusion of Muslim women through the dichotomous construction of women's rights versus group rights also raises the critical question of the nature of citizenship and who is considered to be a deserving citizen. As Bilge argues, the religious feminist subject occupies a tricky position in politics and in religious politics.[49] It becomes necessary to reconceptualize agency so that these accounts of agency may be included in feminist understandings of how women negotiate the boundaries between community and state.

This insight leads to the question of where we should also focus our attentions to move toward equality for Muslim women. Indeed, going beyond the secularism versus women's rights binary, as well as moving away from a focus on the state/community binary, we also need to focus on civil society and the informal public sphere to see how Muslim women have resisted subordination.[50] I argue that the very fact that Muslim women are challenging their subordination under the law by setting up their own religious courts and law boards, as well as by initiating legal challenges in the courts, using the

[49] Bilge, "Beyond Subordination vs. Resistance."
[50] Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton, NJ: Princeton University Press, 2002), p. ix.

general law rather than the personal law, demonstrates they have an understanding of how to move beyond the "two patriarchies" of state and religious leaders the *Ulema*. The existence of a large number of Muslim women's organizations testifies to the exercise of agency and resistance by Muslim women. This understanding requires an acknowledgment that Muslim women can be seen to interrupt this state–*Ulema* patriarchal alliance. It also has significance for our understanding of legal pluralism and it illustrates that normative diversity encompasses more than the allocation of a space for Muslim personal law. Arguably, Muslim women are caught between two patriarchies—state and religion. Yet their struggle toward equality, when understood in these terms, can at best offer only a partial explanation. If we want a full account of this struggle, then we have to open up the normative discussion beyond simply majority/minority relations superimposed on state/*Ulema* power structures, to understand in what other ways Muslim women exercise agency.[51]

In terms of recovering the subaltern citizen, Muslim women must be understood as more than just passive victims caught between these two axes of power. Muslim women's groups have been organizing in defense of their rights and have opposed their inequality under the personal law by challenging the *Ulema*'s interpretations of Muslim law and demanding that Muslim women's organizations reform the personal law.[52] Muslim women have continued to use the general or secular law to resolve their family law disputes. That they continue to approach the secular courts as well as those that they have set up, their own women's religious, community courts, is a strong demonstration of the call for change from within, a call the state and the *Ulema* have chosen to ignore.

The AIMPLB is an organization of male religious leaders, the *Ulema*, who are the self-appointed representatives of the Muslim community, focused on preserving the personal law from any state intrusion as well as on insulating it from any reform called for by women, reformist, or progressive Muslims. The AIMPLB was an intervener in the *Shah Bano* case on behalf of her husband, Mohammed Ahmed Khan, to oppose the granting of maintenance to Shah Bano. The AIMPLB was also one of the key players in subsequently opposing the Supreme Court's *Shah Bano* decision and in insisting on enacting the MWA to further circumscribe Muslim women's rights within the family.

Following the *Shah Bano* controversy and the fraught political climate around issues of minority rights, gender equality, and Muslim personal law, Muslim women's activism emerged, seeking to address women's rights

[51] Emanuela Ceva and Federico Zuolo, "A Matter of Respect: On Majority–Minority Relations in a Liberal Democracy," *Journal of Applied Philosophy* 30/3 (2013): 239–53, at 240.

[52] Srinivas Bhaskar, "Progressive Muslim Women Call for Personal Law Reform," *Niti Central*, June 24, 2014, <http://www.niticentral.com/2014/06/29/progressive-muslim-women-call-for-personal-law-reform-232445.html>.

in general rather than focusing only on reforming the personal law.[53] A noteworthy development has been the rise of Muslim-led networks that challenge the authority of the *Ulema* and their legitimacy as the sole spokesmen of Muslims. Simultaneously reframing the category "Muslim women," these activists assert their political agency in their efforts to enlarge women's rights.[54]

One of the prominent organizations is Awaaz-e-Niswasn (AeN, Women's Voice, in English), founded in Mumbai in 1987 by Shahnaaz Shaikh, in response to her experience of disadvantage and discrimination under Muslim personal law.[55] The organization, however, is concerned not just with the reform of Muslim personal law and issues concerning Muslim women, but rather is conceived of as an organization that caters to the needs of all Indian women without regard to religion. The objectives of AeN are to assert women's rights and to insist on state and community accountability, as well as to make visible the issues affecting Muslim women and to combat their disadvantage in all spheres, including educational, economic, and social. AeN is committed to the reform of personal laws disadvantaging Muslim women as well as to ensuring gender equality in all laws relating to women. The organization addresses a wide range of issues, from domestic and sexual violence to unfair divorce practices, offering a safe space for survivors of domestic abuse, and providing legal support, trauma counselling, and educational and vocational training. Resisting opposition from the *Ulema*, AeN has been successful in organizing Muslim women in local communities.

The recognition that the legal status of women is critical to their equality led AeN to form an advocacy platform, the pan-Indian Muslim Women's Rights Network (MWRN), in 1997. Led by the AeN, the stated objective of MWRN is to campaign for the rights of Muslim women as well as those for the reform of all religious personal laws, as they all have gender-discriminatory aspects. It is noteworthy that MWRN links the reform of the status of women under the personal laws with women's rights as equal citizens.[56] The MWRN as a coalition of advocacy groups does not have a specifically religious or faith-based agenda, choosing to premise their demands for change in the status of women by appealing to constitutional rights and international human rights norms.

Most recently, in the mid-2000s, a number of Muslim women's organizations were formed to challenge the *Ulema* and their stranglehold on the interpretation of Muslim law. Prominent among these are the All India Muslim Women Law Board (AIMWLB) and the Bharatiya Muslim Mahila

[53] Zoya Hasan, "Religion, Feminist Politics and Muslim Women's Rights in India," in *Women and Law: Critical Feminist Perspectives*, ed. Kalpana Kannabiran (New Delhi: Sage, 2014), pp. 264–73, at 269.

[54] Ibid., p. 264.

[55] Awaaz-e-Niswaan, "Our History," <http://www.niswaan.org/our-history.html>.

[56] Awaaz-e-Niswaan, "Our Work," <http://www.niswaan.org/our-work.html>.

Andolan (BMMA) (or Indian Muslim Women's Movement, in English). The All India Muslim Women Personal Law Board (AIMWPLB) was established in 2005 as an effort by Muslim women activists to counter the retrograde interpretations of Muslim law by the *Ulema* of the All India Muslim Personal Law Board (AIMPLB). At each opportunity, the AIMPLB has opposed any call for change, in particular, calls from Muslim women's groups to address issues of polygamy and unilateral divorce.[57] Frustrated by the refusal of the *Ulema* to heed women's calls for reform, the AIMWPLB was set up by Shaista Amber, offering women-friendly reinterpretations of Muslim law.

Another significant group is the Bhartiya Muslim Mahila Andolan, BMMA. Illustrating the ways in which Muslim women's leaders navigate India's normative diversity, BMMA cofounder Zakia Soman equally claims both her faith and her citizenship as an Indian in efforts to reform Muslim personal law. This understanding shapes the nature of the struggle—using the general law, constitutional rights, and the language of a reinterpreted Muslim law.[58] The BMMA insists on reclaiming Muslim personal law, reinterpreting it in accordance with Qur'anic principles, constitutional guarantees, and international human rights norms. The BMMA emphasizes that the state as well as the community should be held accountable to Muslim women.[59] Dr. Noorjehan Safia Niaz, a cofounder of BMMA, has expressed concern about the abysmal legal status of Muslim women. She is particularly concerned about the reluctance of community leaders and the state to address women's inequality, and their refusal to reform the law. Niaz notes that, on the one hand, community leaders refuse to listen to Muslim women's calls for reform, and on the other hand, the state refuses to intervene as Muslim law reform is considered too politically sensitive an issue.[60] Working closely with the late

57 See Narain, *Reclaiming*, p. 153.

58 <https://bmmaindia.com/about/>. From the webpage of the BMMA, the organization's objectives, in its own words, are: To work towards understanding and ameliorating the marginalization of the Muslim community and Muslim women. To work to uphold the Constitutional principles like equality, liberty, secularism, social justice and democracy. To take forward the process of legal reforms within the Muslim personal law. To collaborate and build alliance with other movements and networks that are fighting for social equality and human rights. To work towards empowering Muslim women and take steps to ensure their social, economic, political, civil, legal and religious rights. To undertake and propagate positive and liberal interpretations of religion which are in consonance with principles of justice, equality, fairness and protection of human rights. To oppose fascism, exploitative capitalism, communalism, imperialism in all its forms and to support peace, justice and uphold human rights. To understand the caste hierarchies within the Muslim community and raise the issues of Dalit Muslims. To create an alternative progressive voice within the Muslim community.

59 BMMA, "Report of the Consultation: Rights of Muslim Women and Institutional Linkages," September 30, 2013, <https://bmmaindia.com/2014/01/02/state-level-workshop-on-strengthening-institutional-linkage-and-rights-of-muslim-women-in-india/> (accessed November 21, 2016).

60 Ibid.

Asghar Ali Engineer, India's most prominent Muslim reformist, in June 2014, the BMMA released a draft law, entitled the Muslim Family Law Act, to address women's disadvantage in Muslim family law, doing away with polygamy and the oral triple *talaq* or triple divorce, arguably the most troublesome aspects of the personal law as it currently stands.

A significant development in the Indian feminist movement has been the convergence between religious feminists and secular feminists. Women's rights activists now advocate for a combination of internal reform and state legislative initiatives to reform key aspects of women's rights. This is a more nuanced position of the reform of religious personal law combined with enacting gender-just laws derived from the principle of a uniform family law.[61] Certainly, there have been cleavages within the women's groups in India, with some Muslim activists criticizing the mainstream women's movement for either favoring a secular approach which left little room for women of faith or for having, however unconscious, an upper-caste Hindu bias.

The crisis of secularism in India in the aftermath of the *Shah Bano* controversy led to a serious reorientation of the feminist movement, with mainstream feminist groups moving away from their past insistence on a UCC and reform of Muslim personal law, to focus instead on reforming those aspects of women's lives that cut across religious identity, such as sexual assault, violence against women, adoption of children, and the division of marital property upon dissolution of marriage. Demonstrating its wide impact, from community organizing to political activism and legal reform, AeN successfully worked with other women's organizations to ensure the passage of India's Domestic Violence Act.[62] Indeed, it would be fair to say that the women's movement has been relatively successful in this approach, with the enactment of legislation such as the Domestic Violence Act and the Prevention of Sexual Harassment Act.[63]

As noted scholar Zoya Hasan writes, despite the fact that, thus far, there have been no major legal reforms of Muslim women's rights, "the presence of Muslim women-led networks marks a significant shift in the Indian social landscape."[64] The AIMWPLB, the BMMA, and several other Muslim women's organizations have challenged the *Ulema*'s monopoly over legal norms and

[61] Hasan, "Religion, Feminist," p. 269.

[62] "Turning Up the Volume on Women's Voices: Hasina Khan, Mumbai Human Rights Defender," *American Jewish World Service*, December 11, 2008, <http://www.huffingtonpost.com/ruth-messinger/seeking-transformative-ju_b_4072019.html> (accessed November 21, 2016).

[63] The Protection of Women from Domestic Violence Act, 2005 (India). No. 43 of 2005, *The Gazette of India Extraordinary*, Part II, Section 1, September 13, 2005. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (India). No. 14 of 2013, *The Gazette of India Extraordinary*, Part II, Section 1, April 22, 2013.

[64] Hasan, "Religion, Feminist," p. 272.

interpretation. Muslim-led women's organizations provide a comprehensive overview of the links between Muslim women's activism and the women's movement more generally, and their rise highlights the diversification of the women's movement, and the willingness of these organizations to challenge traditional structures of authority both within the state and the community at multiple levels. It is through these challenges that the space has now been created for Muslim women, both discursive and real, to renegotiate their identities, to challenge gender essentialism, and to assert their rights, thereby interrupting the complacency of the public/private divide. As Hasan notes, it is all the more remarkable that they have been able thus to "reformulate relations of power within an increasingly constrained and polarised political context, one in which feminists have little room to manoeuvre outside of the confines of religious boundaries."[65]

Influential legal scholar and former chair of India's Minorities Commission, Tahir Mahmood, names the AIMPLB as one of the main obstacles in the way of reform, stating that its members are "doing a disservice to the community." According to him,

> The hold of maulvis (religious leaders) over the community is so strong that there is absolutely no scope for reform of Muslim Law in any foreseeable future in India. For any reform, we will have to look at the judiciary, which has been introducing it through a circuitous way. The judiciary is the only hope.[66]

In this context, it is important to note that the Supreme Court of India, in a July 2014 decision in *Vishwa Lochan Madan v. Union of India*, declared that fatwas, or legal opinions, issued by religious courts, which undermined individual Muslim women's rights, were void and without legal force.[67] The decision was with respect to fatwas given by various religious courts, known as Darul Uloom or Darul Qaza, across India in three well-publicized cases where Muslim women had been raped by their fathers-in-law.[68] Rather than seeking justice for the survivors of sexual assault and punishing the perpetrators, religious leaders declared the women were now divorced from their husbands for having had sexual intercourse with the rapists. It is important to note that in none of these cases did the women themselves bring the complaint to the religious courts. Unsurprisingly, harsh punishments were meted out by these religious courts, which form a parallel, non-state legal system without state sanction and are essentially community courts administering community

[65] Ibid.

[66] Ajaz Ashraf, "Ban Triple Talaq and Abolish Muslim Personal Law Board, Says Former Minorities Commission Chairman," *Scroll.in*, May 5, 2015, <scroll.in/article/724902/ban-triple-talaq-and-abolish-muslim-personal-law-board-says-former-minorities-commission-chairman>.

[67] *Vishwa Madan Lochan v Union of India & Ors* Writ petition (civil) no. 386 of 2005 (India), decided on July 7, 2014 [hereafter *Vishwa Madan Lochan*].

[68] *Vishwa Madan Lochan*, pp. 3–4.

justice. This decision from India's Supreme Court discrediting such fatwas issued by Shari'a courts and supported by the AIMPLB and the *Ulema* as being incompatible with India's laws, constitution, and human rights, was supported and welcomed by Zakia Soman, president of the BMMA:

> We whole-heartedly welcome today's judgment . . . against fatwas that trample upon rights of individuals and stating that diktats which are in violation of rights of any individual are to be considered illegal and invalid. . . . This far-sighted judgment will go a long way in enabling the poor and women among the Muslim community to get speedy justice and at the same time their fundamental rights will not be subject to arbitrary interpretations and violation.[69]

On the other hand, this decision also drew criticism for the court's refusal to go further. Rather than simply stating that the fatwas had no legal validity, Muslim activists like Hasina Khan of AeN would have liked the court to go further to question the very authority of clerics. Moreover, by dismissing the fatwas as having no legal validity, the court thereby failed to recognize the reality that women are subject to community-based structures of authority and that this is a critical issue that the judiciary should have tackled.[70] The difficulty with community-based alternative dispute resolution mechanisms, which are not subject to judicial scrutiny, oversight, or regulation, is that those who are least powerful within the group are bound by structures of authority against which there is little possibility of dissent. In effect, by acknowledging that the Shari'a courts fill a gap that the state legal system cannot satisfy, and by stating that the pronouncements of these community courts are not legally binding, and yet making no effort to regulate or oversee these courts to ensure that basic principles of equality and justice are met, the Supreme Court is effectively abandoning Muslim women to discriminatory misogynistic interpretations of Muslim personal law.

As Hasina Khan points out,

> The judgment recognises that alternate dispute redressal mechanisms such as Darul Qazas are necessary, because courts can't reach the most marginalised. But it says their decisions must not impinge on anyone's legal rights. How does one bind clerics to this without a law that they must follow? How do you make them accountable?

It is critical to note that precisely because the state sees the religious courts as being outside of the judicial system and yet an important aspect of

[69] "Ruling on Sharia Courts Bolsters Rights of India's Muslim Women, Campaigners Say," *Reuters*, July 8, 2014, <http://in.reuters.com/article/2014/07/08/india-muslims-sharia-sc-idINKBN0FD1FV20140708>.

[70] Jyoti Punwani, "Muslim Women and Feminists Speak Out Against the Supreme Court's Sharia Judgment," *Scroll.in*, May 12, 2015, <http://scroll.in/article/670215/muslim-women-and-feminists-speak-out-against-the-supreme-courts-sharia-judgment>.

community regulation, this gives them limitless powers to act with impunity, as indeed the incidents under consideration in the Fatwa case illustrate. As Khan astutely further points out, "If the state leaves it to the community to sort out its disputes, the weakest sections of society have to bear the brunt."[71] To declare that fatwas do not have any legal force and therefore women are not obliged to obey them is a simplistic misrecognition of the reality of the multiplicity of oppressions Muslim women face, and ignores the force of non-state legal orderings on vulnerable groups within the community.

CONCLUSION

So what are the implications for the equality of Indian Muslim women in this legal landscape? What does it mean for normative diversity and the regulation of Muslim women? What is the possibility of making joint governance, a choice between religious and secular jurisdiction, work? Can Muslim women exercise a free choice of exit and entry? Indian Muslim feminists, activists, women's rights advocates, and reformists argue that a well-designed, "woman-friendly," religious status-based legal pluralism can help resolve the gendered dilemmas of difference faced by religious women, and help to challenge both community leaders' and the state's unwillingness to reform the law to address the disadvantage of Muslim women.

These theoretical questions have serious material consequences for the lived reality of Muslim women in India who are disadvantaged in many aspects of family life. I argue that equality cannot be sustained where Muslim women's inequality is state legislated in the name of legal pluralism and minority rights. As Jürgen Habermas cautions, state-administered group rights could result in "an administrative preservation of cultural species."[72] Drawing from this insight, I argue that we need to push for recognition of the equality of Muslim women as an essential aspect of democracy. In order to do this, we must understand where power is located and where power has to be challenged: religious orthodoxy and dogmatic understandings of secularism and of state-sponsored minority rights that refuse to pay attention to inequality and vulnerability within groups. The challenge is to find the kind of institutional arrangement that will foster belonging, but not at the expense of equality. If the minority rights debate is not to reify and solidify hierarchical, patriarchal forms of community control over minority women, then the debate has to go beyond the majority–minority question.

[71] Ibid.

[72] Jürgen Habermas, "Struggles for Recognition in Constitutional States," *European Journal of Philosophy* 1 (1993): 128–55 at 142.

The uneasy relationship between democratic inclusion, secularism, and religion with regard to Muslim women's rights, and the attendant power dynamics, underscore the need to problematize these dichotomies of secular/religious, modernity/tradition, and public/private. The emerging new discourse of Muslim feminists in India, challenging traditional interpretations of Muslim personal law, provide a counter-discourse to both the official narrative of modernity and progress as well as to that of the *Ulema* who claim to be preserving religion and culture through safeguarding women's rights within Islam. The explicit exclusion of Muslim women in a misconception of both secularism and of the protection of minority rights in India underscores the need to challenge both the state and the *Ulema* and their focus on the politics of cultural difference to the exclusion of structural inequality. Indeed, any policy of protecting minority rights that does not take into account structural disadvantage is doomed to failure. There is a critical need to construct a viable, inclusive democracy, one that includes Muslim women.

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9

Islam, Gender, and Democracy in Iran

Ziba Mir-Hosseini

In 1995, in the course of research on gender and religious discourses in Iran, I came across a statement by the controversial religious intellectual Abdolkarim Soroush. It was in a lecture (audio-taped) that he gave to the annual meeting of the main student organization on the recent emergence of rights-based as opposed to duty-based approaches to Islam's sacred texts. As usual, in the break following Soroush's lecture, audience members handed in questions that he responded to after the break. In response to a question about why human rights were only weakly grounded in Islamic discourses, Soroush said something to the effect that "we can speak of human rights in Islam only when we treat a violation of *haqq* (rights) as we are used to treating a violation of *namus* (honour)."

Namus is a complex concept. In Iran, as in many neighboring countries, it is a core value, so deeply ingrained in the dominant culture that it is rarely questioned or even discussed—except when it is attacked or infringed. It is very much linked with the notion of the sexual integrity of the family and the group. Girls are brought up to understand that their *namus* resides in their bodies; boys are raised with one of their prime duties being to protect the *namus* of their close female relatives, especially their sisters. These practices mean that a woman's sexual propriety is always the concern of some man: her father, brothers, husband, sons.

Before the 1979 Revolution, these values and practices were strong throughout Iran, but the spread of education and liberal ideas had weakened them in certain sectors of society, mainly among the educated middle class in the larger cities, and particularly in affluent north Tehran. Notions of women's right to control their own bodies were germinating, and certain liberal laws were passed that improved the gender imbalance. Notably, the 1967 Family Protection Law restricted polygamy and gave women more or less the same rights as men with regard to divorce and child custody.

The analogy between *haqq* (rights) and *namus* (honor) is intriguing, and of course gendered. It captures the obsession with sexuality and the control of women in Islamist discourses. But it was not until the disputed 2009 presidential election in Iran, and the emergence of the "Green Movement"[1] in its aftermath, that I came to realize how deeply the two are associated. It is this association that I shall explore here; its dynamics, I suggest, have animated Iranian politics since the start of the twentieth century, when the quest for democracy began.

I argue, first, that to understand how Iranian politics have been shaped since the 1979 Revolution, we need to question the conventional emphasis on a polarized struggle between "Islamic" and "secularist" tendencies. A tension between religiosity and secularity, and a radical difference of views over the proper place of religion in politics and the moral basis of legitimate authority, have always been integral to the main struggle, which has been, and continues to be, between the ideologies and practices of despotism and patriarchy, on the one side, and those of democracy, pluralism, and gender equality, on the other. This struggle first emerged in the 1906–11 Constitutional Revolution, though the battle lines have shifted, as have the scope and nature of women's participation in society and politics.[2]

Second, I argue that one of many unintended consequences of the merger of religious and political authority in post-revolutionary Iran has been a growing popular understanding of the nature of this struggle. This understanding made the 2009 election and its aftermath a turning point; by then, the traditional cultural value of *namus*, sexual honor, was indeed, for many Iranians, outweighed by the notion of *haqq*, rights, especially the right to vote and to have one's vote counted. The regime's violation of this right in the 2009 presidential election created such fury, such a gut reaction, that huge crowds came out onto the streets of the cities, with men and women side by side in the demonstrations in open defiance of the regime's rule of public gender segregation (designed to protect the "honor" of women and the state). Popular anger was at first focused into a single slogan: "Where is my vote?" But as the protests developed and then were brutally suppressed, both the regime's

[1] A distinctive green color was adopted by supporters of Mir-Hossein Mousavi, one of the reformist candidates, who promised to bring about a democratic shift in the political structure. See the collection edited by Nader Hashemi and Danny Postel, *The People Reloaded: The Green Movement and the Struggle for Iran's Future* (New York: Melville House, 2010). The present chapter is a development and elaboration of my brief contribution to that collection, originally published as "Broken Taboos in Post-Election Iran," *Middle East Report Online*, December 17, 2009, <http://www.merip.org/mero/mero121709>.

[2] For a concise discussion, see Nader Hashemi, "Religious Disputation and Democratic Constitutionalism: The Enduring Legacy of the Constitutional Revolution on the Struggle for Democracy in Iran," in *Civil Society and Democracy in Iran*, ed. Ramin Jahanbegloo (London: Lexington Books, 2012), pp. 97–112.

actions and the Green Movement's responses increasingly played on the links between political rights and sexual honor.

I begin with an outline of political developments since the 1979 Revolution, leading to the 2009 presidential elections. Rather than framing my narrative in terms of whether the project of an "Islamic Republic" has succeeded or failed, which has been the subtext of much literature on post-revolutionary Iran,[3] I focus on how the inbuilt tension between "Islamic" and "Republican" elements became a catalyst for ideological and social transformation.

THE QUEST FOR DEMOCRACY IN IRAN

During the twentieth century, Iran experienced two popular revolutions. Both were animated by contestation over the proper place of religion in politics and the moral basis of legitimate political authority, and in both the main demands were independence of foreign powers, democracy, and the rule of law; but both led to dictatorships, the first secular, the second religious.

In the 1906–11 Constitutional Revolution, secularist democrats initially gained the upper hand but, for a combination of internal and external reasons, democracy and the rule of law failed to take root; the resultant impasse was resolved in the 1920s by the modernizing and secularizing, but despotic, Pahlavi monarchy. A brief resurgence of democracy in the late 1940s was ended in 1953 by foreign intervention when a CIA-funded coup restored the autocratic Pahlavi monarchy. Over the next twenty-five years, both democratic and religious opposition to Pahlavi rule grew until they erupted in 1978–9 in the second Revolution. The monarchy was replaced by an Islamic Republic, a novel combination of clerical theocracy and populist democracy,[4] under the leadership of Ayatollah Khomeini.

This new Islamic Republic merged religious and political powers, declared Shariʿa the law of the land and embarked on a fierce process of "Islamizing" law and society, with some devastating consequences for women, religious minorities, and secular Iranians. In the process, it came to confront two urgent late twentieth-century demands: for democratic pluralism and for gender equality. These two demands transformed the Islamic Republic from within, challenging its uneasy amalgamation of Islamic and Republican elements.

The post-revolutionary regime's attempt to "Islamize" law and society began with attempts both to safeguard women's "chastity" and to redefine the nature and scope of their rights. One of the first acts of the revolutionary

[3] For example, Olivier Roy, *The Failure of Political Islam* (London: I.B.Tauris, 1999).

[4] I use theocracy in the sense of "government by divine guidance," which became enshrined in the constitution of the Islamic Republic.

regime was to dismantle the 1967 Family Protection Law. The victorious Islamist "brothers" took upon themselves the duty of "protecting"—in other words, controlling—the *namus* of all their "sisters." Honor became collective and the state took charge of it. The authority of the regime, in fact, came to hinge on its success in policing sexual morality. Women's "rights" were only those granted them by the rulings of Muslim jurists, and relations between the sexes—in private as well as in public—were strictly confined by the red lines set by old jurisprudential texts. An official gender policy and culture were instituted, epitomized by compulsory head covering for women and promoted as the "culture of hijab." The government instituted gender segregation in public space, criminalized sexual contact outside marriage, and reduced women to sexual objects, depriving them of many legal rights they had acquired.

This effort to put the clock back was thwarted by the fact that, after the Revolution, women retained the right to vote and participated at a much higher rate in education and public life. The state's appropriation of the role of protector of women's honor gave women from traditional and religious families the license to be in public space, which now, in the eyes of their families, was purged from "corruption." This not only reduced the role of fathers and brothers and made the experience of patriarchy impersonal, thus psychologically much easier to reject, but also made it possible for those men who were not "Islamic brothers" to identify with women's experience of oppression.

The literature on the politics of gender and law in post-revolutionary Iran is extensive.[5] Much of the discussion in the early 1980s focused on dire predictions concerning the fate of women and their status as chattels under an Islamic Republic committed to application of the Shari'a. By the early 1990s, the discussion moved to documenting women's increased gender consciousness, and how they were resisting state-imposed restrictions and struggling to retain their legal rights. In my own writings, I have argued that by identifying the "Shari'a" with state law, the regime turned it into a site of political contestation and opened its rulings to scrutiny and public debate. Premised on a premodern notion of justice, these rulings entitle individuals to different rights on the basis of faith, social status, and gender: they subject women to male

[5] This literature is too varied and complex to discuss here. Much of it has been produced by Iranians in exile. For a bibliographic essay on this literature until the mid-1990s, see Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (Princeton, NJ: Princeton University Press, 1999; London: I.B. Tauris, 2000), pp. 283–5; for insightful analysis, see Parvin Paidar, "Feminism and Islam in Iran," in *Gendering the Middle East*, ed. Deniz Kandiyoti (London: I.B. Tauris, 1996), pp. 51–68; Afsaneh Najmabadi, "Feminism in an Islamic Republic: Years of Hardship, Years of Growth," in *Islam, Gender and Social Change*, ed. Yvonne Y. Haddad and John L. Esposito (New York: Oxford University Press, 1998), pp. 59–84; Nayereh Tohidi, "The Women's Movement and Feminism in Iran: A Global Perspective," in *Women's Movements in the Global Era*, ed. Amrita Basu (Boulder, CO: Westview, 2010), pp. 375–414.

authority and treat women and non-Muslims as second-class citizens. The result has been so out of touch with current understandings of justice, with popular aspirations, and with the ideals of the Revolution, that ordinary people, as well as the religious and political elite, have come to rethink and redefine their notions of the sacred and the Shariʿa.[6] Paradoxically, by transforming Shariʿa from an ideal into a state ideology and applying its legal mandates through the machinery of a modern nation state, the Islamic Republic has unwittingly set in motion a process of "desanctification" and "secularization" of its legal mandates. What made this possible was the ambiguity in the founding theory of the state as to where the base of political and religious authority should lie.

"ISLAM" VS "REPUBLIC"

Brought into existence following a popular revolution, the idea of an "Islamic Republic" was premised on two broad assumptions: first, that what makes a state "Islamic" is adherence to and implementation of the Shariʿa; second, that, given free choice in elections to political office, the people will choose "Islam" and thus vote for clerics as the custodians and interpreters of the Shariʿa.[7]

The constitution of the Islamic Republic clearly recognizes the people's right to choose who will govern them, establishing democratic and legislative institutions such as the parliament and the presidency, both elected by direct popular vote. But it subordinates the people's will to that of the clerical establishment through the unelected institutions of the Rule of the Jurist (*velayat-e faqih*), or Leader (*rahbar*), and the Guardian Council, composed of twelve members, six of whom are jurists appointed by the Leader, the other six being laymen nominated by the head of the judiciary and approved by parliament, with a tenure of six years. The Leader has a wide mandate and a

[6] See in particular Ziba Mir-Hosseini, "Stretching the Limits: A Feminist Reading of the Shariʿa in Post-Khomeini Iran," in *Islam and Feminism: Legal and Literary Perspectives*, ed. Mai Yamani (London: Ithaca Press, 1996), pp. 285–319; Ziba Mir-Hosseini, "Muslim Women's Quest for Equality: Between Islamic Law and Feminism," *Critical Inquiry* 32 (Summer 2006): 629–45; Ziba Mir-Hosseini, "Debating Women: Gender and the Public Sphere in Post-Revolutionary Iran," in *Civil Society in Comparative Muslim Contexts*, ed. Amyn Sajoo (London: I.B. Tauris and Institute of Ismaili Studies, 2002), pp. 95–122.

[7] This section draws on my earlier writings, in particular, Ziba Mir-Hosseini, "Women and Politics in Post-Khomeini Iran: Divorce, Veiling and Emerging Feminist Voices," in *Women and Politics in the Third World*, ed. Haleh Afshar (London: Routledge, 1996), pp. 142–70; "The Conservative and Reformist Conflict over Women's Rights in Iran," *International Journal of Politics, Culture and Society* 16/1 (Fall 2002): 37–53; "The Politics and Hermeneutics of Hijab in Iran: From Confinement to Choice," *Muslim World Journal of Human Rights* 4/1 (Summer–Fall 2007): Art. 2 [no page nos.]; and Ziba Mir-Hosseini and Richard Tapper, *Islam and Democracy in Iran: Eshkevari and the Quest for Reform* (London: I.B. Tauris, 2006), pp. 1–38.

final say in running the state. Guardian Council members are charged with deciding whether laws passed by parliament conform to the Shari'a and the constitution; in effect, they are the official interpreters of both the constitution and Shari'a.

The constitution named Khomeini as Leader for life, and created an Assembly of Experts to choose his eventual successor, and to supervise his activities by ensuring that he complies with his religious and constitutional duties. The eighty-six members of this Assembly are popularly elected every eight years; but only qualified clerics are eligible to stand, and from the outset conservative clerics have dominated. In practice so far, the Assembly has merely endorsed the actions of the Leader. The constitution allows the Guardian Council to supervise all elections, which the latter has interpreted as the right to vet candidates' eligibility to stand. This means that, in effect, the Assembly of Experts and the Guardian Council form a closed system that allows the Leader unlimited power. Through his appointees to the Guardian Council, he can control both legislative and executive powers.[8]

As the revolutionary fervor subsided, neither of the initial assumptions proved as valid or clear-cut as the framers of the constitution hoped, and cracks in the system soon appeared. Either the notion of "Islamic" must adapt to the political exigencies of a modern democracy; or the people's choice must be restricted or bypassed, which meant betraying the Revolution's ideals and losing the popular support from which the regime drew legitimacy.

The story of the Islamic Republic has been the story of how the rulers have sought to manage this basic problem of legitimacy, and their success or failure has been measured in regular elections. Simply put, it is the story of the unfolding of the structural tension between the elected and unelected institutions within the state, embodied in the concepts of "Islamism" and "republicanism."

As long as Ayatollah Khomeini was alive, this tension was managed and did not confront the state with a crisis of legitimacy. There were several reasons for this. First, apart from Khomeini's personal charisma as Leader, and his religious standing as supreme religious authority, his style of leadership helped to diffuse the tension. Not only was he mindful of—and responsive to—the popular will, he managed to rise above factional politics and to avoid being claimed by any faction. Perhaps the most important reasons were the

[8] For the constitution, see Asghar Schirazi, *The Constitution of Iran: Politics and the State in the Islamic Republic* (London: I.B. Tauris, 1997). For the political structure, see Wilfried Buchta, *Who Rules Iran? The Structure of Power in the Islamic Republic* (Washington, DC, and Berlin: Washington Institute for Near East Policy and Konrad Adenauer Stiftung, 2000). For further developments and amendments of the constitution, see Said Amir Arjomand, *After Khomeini: Iran under His Successors* (Oxford: Oxford University Press, 2009). For a reassessment of the process of drafting the constitution, see Ali Rahnema, "Ayatollah Khomeini's Rule of the Guardian Jurist: From Theory to Practice," in *A Critical Introduction to Khomeini*, ed. Arshin Adib-Moghadam (Cambridge: Cambridge University Press, 2014), pp. 88–114.

freshness of the revolutionary momentum and the fact that the politics of the period were preoccupied with the Iran–Iraq War (1980–8), a unifying force that provided the mechanisms for suppressing dissent.

Islamist hardliners eventually gained the upper hand and excluded secularist and liberal Islamists from structures of power. But the issue of legitimate authority remained crucial, revealing the ambiguity in the founding theory of the state as to where the base of political and religious authority should lie. In Twelver Shiʿism, supreme religious authority is encapsulated in the institution of *marjaʿiyat*, embodied in the person of the *marjaʿ-e taqlid* (the "source of emulation")—that is, a high-ranking cleric whose opinions in matters of religious law are binding on those who choose to follow him. *Marjaʿiyat* as an institution emerged in the nineteenth century, and, on the eve of the Revolution, there were five *marajeʿ* in the Shiʿi world. Ayatollah Khomeini was one of them. Each had his followers and supporters among ordinary Shiʿa all over the world and among clerics and students in various seminaries.[9] They were equal in rank and religious authority; none was recognized as sole *marjaʿ*, and none had a modern state apparatus at his disposal.

As the Islamic Republic consolidated itself, a structural contradiction between the two notions of authority—the *marjaʿiyat* and the *velayat-e faqih*—became increasingly evident. The first has no overt political claims, having evolved through a tacit consensus between Shiʿi masses and clerics. The second, a child of the Revolution, has no precedent in Shiʿa political thought, but exerts power over and demands allegiance from all the Shiʿa. It invests the ruling Jurist with the kind of powers and mandate that Shiʿi theology recognizes only for the Prophet and the twelve Infallible Imams.[10]

By 1988, the tension between these two notions of authority intensified and brought about a constitutional crisis. There was conflict not only between the clerical supporters and opponents of *velayat-e faqih*, but also between the factions within the ruling elite, which held differing views of authority. Khomeini's dismissal of his designated successor, Ayatollah Montazeri, in March 1989, added a new edge to the tension. Montazeri was the most senior clerical supporter of the principle of *velayat-e faqih*, and also the only one whose own *marjaʿiyat* was recognized. He had impeccable revolutionary

[9] Ayatollah Khoi'i (d. 1992) lived in Najaf, the rest in Iran: Ayatollahs Shariʿat-Madari (d. 1982), Marʿashi-Najafi (d. 1992), and Golpaygani (d. 1993) in Qom, and Khonsari (d. 1985) in Tehran; see Moojan Momen, *An Introduction to Shiʿi Islam* (New Haven, CT, and London: Yale University Press, 1985), p. 249; Michael Fischer, *Iran: From Religious Protest to Revolution* (Cambridge, MA: Harvard University Press, 1980), p. 88.

[10] See Said Amir Arjomand, *The Turban for the Crown: The Islamic Revolution in Iran* (Oxford: Oxford University Press, 1988); Abdulaziz Sachedina, *The Just Ruler in Shiʿte Islam: The Comprehensive Authority of the Jurist in Imamite Jurisprudence* (Oxford: Oxford University Press, 1988); Shahrokh Akhavi, "Contending Discourses in Shiʿa Law on the Doctrine of *Wilayat al-Faqih*," *Iranian Studies* 29/3–4 (1996): 229–68.

credentials: he had spent years in the previous regime's prisons, played an instrumental role in inserting the *velayat-e faqih* into the constitution, and published discussions on the subject from both theoretical and theological angles. But he was also a vocal critic of state policies, and was not willing to compromise his religious standing and beliefs for the sake of power. Montazeri's dismissal, the outcome of an acrimonious struggle for the succession, was in effect a proof of the impossibility of combining the old and new notions of authority.

The crisis was resolved when Khomeini himself gave his blessing to the separation of *velayat* and *marjaʿiyat*, and set up a committee for revision of the constitution. His death in June the same year forced a redefinition of the relationship between religious authority and the state.[11] In July 1989, parliament speaker ʿAli Akbar Hashemi Rafsanjani was elected president. A popular referendum ratified a revised constitution that no longer required the Leader to be a *marjaʿ*, but merely a cleric qualified to issue fatwas in all fields of Islamic law. The revised constitution also abolished the office of prime minister (filled since 1981 by Mir-Hossein Mousavi) and transferred its executive powers to the presidency. Rafsanjani's priorities and his pragmatic approach reversed some of the earlier policies, notably in the areas of the economy and foreign affairs. The welfare policies of the wartime government under Prime Minister Mousavi were replaced by measures that encouraged the growth of the mercantile bourgeoisie and state-connected entrepreneurs.[12]

Khomeini's successor as Leader, Ali Khamene'i, a middle-ranking cleric, lacked his religious authority and charisma, which made him hostage to the seminary and factional politics. Using the institutions at his disposal, Khamene'i started to expand his own power base and to narrow the scope of democracy, especially by introducing a more stringent vetting of candidates for elected office. This upset the delicate balance of power and the working relationship that had developed between the two ruling "factions," the so-called "Rightists" and "Leftists." Although often spoken of as polarized factions, these terms are relative, the Rightists being more conservative and theocratic, the Leftists more progressive and democratic; they were all, of course, Islamists and supporters of the principle of *velayat-e faqih*. Indeed, differences among them are best seen as positions around which people gathered in relation to specific issues, many in the center shifting position according to the issue.[13]

[11] For a succinct discussion, see Said Amir Arjomand, "The Constitution of the Islamic Republic," *Encyclopaedia Iranica* 6 (1992): 151–8.

[12] Ali Ansari, *Iran, Islam and Democracy: The Politics of Managing Change* (London: Royal Institute of International Affairs, 2000), pp. 52–81.

[13] For factional politics, see Bahman Baktiari, *Parliamentary Politics in Revolutionary Iran: The Institutionalization of Factional Politics* (Gainesville, FL: University Press of Florida, 1996);

By the mid-1990s, the Leftist faction had lost all its influence in the judiciary, and, while it kept its middle-rank officials in government, it lost its ministers. One of them was Mohammad Khatami, Minister of Islamic Guidance and Culture since 1982. In 1992, he resigned under pressure from the Rightist faction, which saw his liberal policies as allowing a form of "cultural invasion." Set aside from decision-making bodies, some of the senior Leftist clerics retired from politics and returned to the seminaries,[14] while others formed political groups and bodies in the seminaries,[15] or set up research and study groups in Tehran and devoted themselves to "cultural activities."[16] They went into a period of political retreat and reflection, during which some of them broke away from absolutist ideology and started to argue for democratic principles and the rule of law.[17] In so doing, they joined the increasing numbers of ordinary citizens who were becoming disillusioned by the widening gap between the ideals of the Islamic Revolution for which they had fought and the realities of the Islamic state they had helped to create.

GENDER DEBATES RESURFACE

Women, more than any other group, had reasons to be disaffected. They felt the harsh reality of subjection to a patriarchal interpretation of Islamic law when applied by the legal machinery of a modern state. They kept their suffrage rights, but most of the pre-revolutionary legal reforms were abolished. Men regained their rights to unilateral divorce and polygamy, while women's rights to divorce and child custody were limited and they were forbidden to study mining and agriculture, to serve as judges, and to appear in public without hijab. Many Islamist women, who had genuinely, if naively, believed that women's position would automatically improve under an Islamic

and Mehdi Moslem, *Factional Politics in Post-Khomeini Iran* (Syracuse, NY: Syracuse University Press, 2002).

[14] For instance, Ayatollah Yusef Sane'i, head of the Guardian Council until 1984, and Ayatollah Musavi Ardabili, head of the judiciary until 1987. Both are now among the main supporters of reform.

[15] For instance, Majma'-e Modarresin va Mohaqqeqin-e Houzeh-ye 'Elmiyeh (Assembly of Teachers and Researchers of Qom Seminaries) was founded as an alternative reformist body to the conservative-dominated Jame'eh-ye Modarresin-e Houzeh-ye 'Elmiyeh (Society of Teachers of Qom Seminaries).

[16] For the different circles of religious intellectuals and their link with the reformist movement, see Hamid Reza Jalaeipour, "Religious Intellectuals and Political Action in the Reform Movement," in *Intellectual Trends in Twentieth-Century Iran: A Critical Survey*, ed. Negin Nabavi (Gainesville, FL: University Press of Florida, 2003), pp. 136–46.

[17] For an overview of the intellectual and sociopolitical roots of this transformation, see Ahmad Ashraf and Ali Banuazizi, "Iran's Tortuous Path toward 'Islamic Liberalism'," *International Journal of Politics, Culture and Society* 15/2 (Winter 2001): 237–56.

state, were increasingly disappointed. They included some early activists, who had played instrumental roles in discrediting feminists and destroying the pre-revolutionary women's press and organizations, as well as many ordinary women for whom Islam meant justice and fairness.[18]

Yet despite women's experience of legal setbacks and other forms of discrimination, the Islamic Republic's "Islamization" and segregation policies paradoxically became a catalyst for their increased participation in society. As the coalition of forces that had brought about the Revolution collapsed, the religious authorities came to rely more and more on popular support, including that of large numbers of women. This gave an opportunity for political activity to so-called "traditional" women, who until then had seen politics as beyond their realm. At the same time, the long-drawn-out war with Iraq, and the accompanying rapid price inflation, forced women into the labor market, while the state's moralistic rhetoric and compulsory veiling made women's activity outside the home respectable in the eyes of religious and traditional families.

The "pragmatic" presidency of Rafsanjani brought some modification in official discourses and policies, and some opening of public space. Some of the earlier restrictions on subjects women could study were removed; family planning and contraception became freely available; divorce laws were amended so as to curtail men's right to divorce and to compensate women in the face of it; and women were appointed as advisory judges in family courts.[19] Debates about gender issues, harshly suppressed after the Revolution, resurfaced. Conducted publicly in the women's press, these debates revealed a growing dissent and pressure for legislation to curb the inequity of men's Shari'a rights. By the early 1990s, there were clear signs of the emergence of a new gender consciousness and a critique of the gender biases in Islamic law. *Zanan* (*Women*), a women's magazine, was the first to air this critique. Its editor and founder, Shahla Sherkat, had played a role in the Islamization of the women's press; in 1982, she became an editor of *Zan-e Ruz*, the most popular and outspoken pre-revolutionary women's magazine that the Islamists had taken over, but in the process, she became a critic of patriarchal interpretations of the Shari'a and found allies in feminism.[20] It is certainly true that the Islamic Republic's rhetoric and policies in the 1980s marginalized and excluded so-called "Westernized" women, but it is also true that they empowered many other women, who came to see themselves as citizens entitled to equal rights. It was becoming increasingly apparent to

[18] Mir-Hosseini, "Women and Politics in Post-Khomeini Iran," pp. 142–70.

[19] Nesta Ramazani, "Women in Iran: The Revolutionary Ebb and Flow," *Middle East Journal* 47 (1993): 409–28.

[20] See Afsaneh Najmabadi, "Feminism in an Islamic Republic," pp. 59–84; Mir-Hosseini, "Stretching the Limits."

them that they could not become full citizens unless a modern, democratic reading of Islamic law was accepted.

RISE AND FALL OF THE REFORMISTS

Such a reading was the objective of a group of Muslim intellectuals, advocates of what came to be known as New Religious Thinking. They included laymen and women as well as clerics, all of whom now saw a widening gap between the ideals of the Revolution and the realities and policies of the Islamic state in which they lived. Representing various strands of modernist Islamic thought that had remained dormant during the war with Iraq, they offered new interpretations of Islam and began to articulate a theoretical critique of the Islamic state from an Islamic perspective.[21] Most prominent was Abdolkarim Soroush, who published a series of controversial articles between 1988 and 1990 on the historicity and relativity of religious knowledge, later developed as a book. In a direct challenge to the religious authority of the clerical establishment, Soroush sought to separate religion from religious knowledge, arguing that, while the first was sacred and immutable, the second was human and evolved over time as a result of forces external to religion itself.[22]

Thus, after over a decade of the experience of Islam in power, Islamic dissent began to be voiced among "insiders." Whereas in the 1980s these men and women worked to consolidate the Islamic Republic, in the 1990s, armed with Soroush's theory of the relativity of religious knowledge, they sought to create a worldview reconciling Islam and modernity, and argued for a demarcation between the state and religion. They tried to redefine and rework Islamic concepts and succeeded in producing discourses that were to become highly attractive to youth and women. They argued that the human understanding of Islam is flexible, that Islam's tenets can be interpreted to encourage both pluralism and democracy and to allow change according to time, place, and experience. For them, the question was no longer who should rule, but how they should rule, and what mechanisms should be in place to curb the excesses of power. In this way, they began to cross the red lines that had previously circumscribed any critical discussion of the political dogma that sanctioned the concentration of power in the institution of Leadership.

[21] For the emergence of this discourse and its key figures, see Mehran Kamrava, *Iran's Intellectual Revolution* (Cambridge: Cambridge University Press, 2000), pp. 120–72.

[22] See Frough Jahanbakhsh, *Islam, Democracy and Religious Modernism (1953–2000): From Bazargan to Sorush* (Leiden: Brill, 2001); Mahmoud Sadri, "Sacral Defense of Secularism: The Political Theologies of Soroush, Shabestari, and Kadivar," *International Journal of Politics, Culture and Society* 15/2 (2001): 257–70; Charles Kurzman, "Critics Within: Islamic Scholars Protest against the Islamic State in Iran," *International Journal of Politics, Culture and Society* 15/2 (2001): 115–35.

Meanwhile, the struggles between traditionalist and pragmatic interpretations of the Shariʿa intensified; and there were increasing signs of popular dissatisfaction with state policies and resentment of the many injustices brought by the "Islamization" of the legal system, which placed the administration of justice in the hands of clerics, and focused on two areas of law: family and criminal law.

Almost every other year under the Islamic Republic there have been elections. Electoral campaigns are those rare moments when the regime's tolerance level rises, and contentious issues can be raised with less fear of repression; they have become occasions for dialogue between the Islamic and Republican sides of the state, as well as between the regime and civil society. This dialogue fostered the emergence of reformist forces seeking to democratize and liberalize the regime from within. Just before the 1996 parliamentary election, with the support of Rafsanjani, whose liberalizing polices were increasingly meeting opposition from the traditional Rightist faction, a group of technocrats formed a new political group (Servants of Construction). Representing the new and moderate right, this group entered the election campaigns with a separate list of candidates. Among them was Rafsanjani's youngest daughter, Fa'ezeh, who had played an important role in promoting women's access to sports at both national and international levels. She won the second highest vote in Tehran; it was rumored that she had in fact topped the poll, but the candidate of the traditional right, Akbar Nateq-Nouri, who was reportedly being groomed for the presidential elections due the following year, was declared the winner.[23] Then in 1997, a last-minute political alliance between outgoing president Rafsanjani's pragmatic modernist right and the Islamic left put forward former culture minister Mohammad Khatami to oppose Nateq-Nuri. The people voted en masse for Khatami, who stood for the "rule of law" and "civil society," and whose ideas and language were drawn largely from the New Religious Thinkers.[24]

So in 1997 the public will reasserted itself with Khatami's election as president, bringing a shift from the theocratic to the democratic side. Almost overnight, new cleavages opened and new political alliances were forged. The major cleavage was now between "Conservatives," who insisted on keeping the ideological construction of "Islam" intact, and "Reformists," who sought to reconcile Islam with the discourses of democracy and human rights. The relatively liberal policies of Khatami's government allowed the voices of dissident intellectuals, both lay and clerical, to be aired in the press and to

[23] See Ziba Mir-Hosseini, "The Rise and Fall of Fa'ezeh Hashemi: Women in Iranian Elections," *Middle East Report* 218 (Spring 2001): 8–11.

[24] For elite factionalism, see Moslem, *Factional Politics*; and Mathew C. Wells, "Thermidor in the Islamic Republic of Iran: The Rise of Muhammad Khatami," *British Journal of Middle Eastern Studies* 26/1 (1999): 27–39.

reach the public. A new public space emerged, comprising a vocal and dynamic press, the universities, the seminaries, and parliament, where the ambiguities and contradictions in the original idea of the Islamic state, its translation into law and policy, and the nature of the Shari'a and its place in everyday life were all subjects of debate.[25]

The victories of reformist candidates in the municipal and parliamentary elections of 1999 and 2000, and Khatami's re-election in June 2001 with over 77 percent of the vote, showed the strength of mass support for the advocates of the new discourse and their vision of Islam. But despite these electoral gains, which put them in charge of both executive and legislative powers, the reformists were unable to fulfil their electoral promises. Instead, they became both internally divided and locked in a fierce political battle with their conservative opponents, who were now identified and aligned with the theocratic and unelected side of the Islamic Republic.

Gender issues became a major area of confrontation. Women's rights and the reform of family law were central issues in the reformists' successful campaign for the 2000 parliamentary elections, but the Guardian Council frustrated their subsequent legislative moves.[26] Despite the slow pace of legal reforms, the Islamic Republic's gender codes began to be relaxed, and the wisdom of compulsory hijab came to be questioned: an issue that until then had been a red line that no one had dared to cross. In theory, no debate had been tolerated; but in practice, many women had challenged the imposition of hijab from the outset, and constantly pushed back its frontiers, and the gender segregation codes had also been flouted.[27] By the early 2000s, colorful and stylish outfits had made their way back onto the streets, and young people increasingly broke gender segregation rules with impunity. Celebrations of International Women's Day, March 8, which had been held during Rafsanjani's presidency by some women activists in their private homes, now became public events. Activists directed their energies into "cultural activities," a euphemism for criticism of biases in law and society. New non-governmental organizations (NGOs) were created, with briefs ranging from environmental issues to defending the rights of political prisoners, providing legal services for disadvantaged women, and the protection of abused children. Some of these activists openly called themselves "secular feminists" and started to distance themselves from the reformists in government.

But the conservatives, led by Khamene'i, successfully used the power of the unelected bodies to frustrate all of the reformists' initiatives in government and

[25] Some of these debates are translated in Mir-Hosseini and Tapper, *Islam and Democracy in Iran*.

[26] See Ziba Mir-Hosseini, "Fatima Haqiqatjoo and the Sixth Majles: A Woman in Her Own Right," *Middle East Report* 233 (Winter 2004): 34–8, <http://www.merip.org/mer/mer233/fatemeh-haqiqatjoo-sixth-majles>.

[27] See Mir-Hosseini, "The Politics and Hermeneutics of Hijab in Iran."

legislative moves in parliament. They also silenced key reformist personalities, first by assassination, then by prosecuting and jailing them, and closed down the vibrant free press that was one of the main early achievements and a platform for the reformists. These measures, however, failed to silence the debates and to circumscribe the public sphere, but rather highlighted the urgency of the debates and the necessity for such a sphere.[28]

Nonetheless, divided and unable to deliver on their electoral promises or to bring about a democratic shift in the structures of power, the reformists started to lose popular support. By the time of the February 2003 council elections, the stalemate produced what the reformists had feared most: voter apathy. Conservatives won the major cities by default—in Tehran, the turnout was a mere 14 percent—though not the villages and small towns.

For the parliamentary elections the following year, the Guardian Council disqualified a large number of reformist candidates, including eighty sitting members. The reformists protested, members organized a sit-in, and there was talk of President Khatami's resignation, but to no avail. The election went ahead without the participation of the largest reformist parties. The conservatives won the election, but victory came at a price: in order to appeal to the popular legitimacy on which the Islamic Republic was founded, they had to appropriate the reformist platform, or at least its rhetoric. The turnout of around 42 percent was the lowest for any parliamentary election in the Islamic Republic.

In the June 2005 presidential elections, having lost the popular argument to the reformists, but strengthened by the reformist government's failures in both domestic policy and foreign relations, the theocratic forces relied on the Revolutionary Guards to ensure the election of their candidate, Mahmud Ahmadinejad. The means by which this was done—rigged ballot boxes, interference with the electoral process by organizing mass votes for their candidate—further undermined the popular legitimacy and mandate on which the Islamic Republic had so far rested.

The failure of the reformists in the 2005 election was also a consequence of US policy in the Middle East. Despite Iran's assistance in dislodging the Taliban in Afghanistan in 2001, President Bush included Iran in his "Axis of Evil" in early 2002. Even after Iran helped to stabilize Iraq following the US invasion in 2003, the Bush administration refused to talk to Iran about nuclear and other issues and appeared determined on regime change. These rebuffs all had a decisive impact on Iranian internal politics. The conservative and theocratic forces in Iran were able to point to the reformists' foreign policy failures, and to use the threat of invasion to silence voices of dissent and to derail the democratic process. The hardliners had what they needed internally,

[28] For an overview of this period, see Ghoncheh Tazmini, *Khatami's Iran: The Islamic Republic and the Turbulent Path to Reform* (London: I.B. Tauris, 2013).

as well as the opportunity to aim for regional influence and popularity in the Muslim world.

During Ahmadinejad's first presidential term, the Revolutionary Guards, from which many of his ministers had emerged, gained increasing control of the country. His government tried to resurrect the early revolutionary gender discourse and policies, and to undo the modest but steady gains of women and civil society during the reformist phase. In 2006, they reinstated restrictions on celebrating March 8, and cancelled some women's meetings planned in universities; police and paramilitary forces broke up the gathering organized by women activists in a central Tehran park. In April, the police launched an unprecedented aggressive drive to reimpose the rigid codes of dress and comportment that prevailed in the early days of the Revolution. The initiative—called the Moral Security Plan—involved female police in full chador, and targeted young women sporting the new hijab fashion, consisting of tight tunics, short trousers, and narrow scarves. Thousands of women were arrested in big cities, with many hundreds of thousands receiving verbal warnings. Then in June, when women tried to stage a rally in a main square in Tehran to protest against discriminatory laws, the protestors, including a number a men, were beaten and many were arrested. Most detainees were released within a week, some on bail, to appear in a Revolutionary Court on charges of "propaganda against the system," "acting against national security," and "participating in an illegal demonstration."[29] The government introduced a number of regressive measures, notably gender quotas to limit women's admission to university—by then they numbered nearly two thirds of students—and a family bill that made it easier for men to practice polygamy. In January 2008, *Zanan* magazine was closed down for "blackening the authorities" by reporting incidents of militia forces raping girls they had arrested on the pretext of "bad hijab."[30]

Yet despite increasing pressures (such as regular interrogation by security forces and detention after attending meetings abroad) and disagreements over what actions to take, women's rights activists remained undaunted and launched a number of campaigns. These campaigns, conducted through the Internet and on websites, became the focal point for opposition to discriminatory laws, raising consciousness, and opening a new forum for discussion and debate in the face of the increasing censorship of the press and the closure of NGOs. Prominent among them was One Million Signatures Demanding Changes to Discriminatory Laws, which became the model for other campaigns and connected women activists inside with Iranians in the diaspora.

[29] Ziba Mir-Hosseini, "Is Time on Iranian Women Protestors' Side?" *Middle East Report Online*, June 16, 2006, <http://www.merip.org/mero/mero061606>.

[30] See "Shutting Down Zanan," *New York Times* editorial, February 7, 2008, <http://www.nytimes.com/2008/02/07/opinion/07thu1.html?_r=0>.

Launched in August 2006, and inspired by Moroccan women's successful 1992 campaign to change family laws, it became a magnet for activists to take the message of gender equality into civil society, by doorstep meetings with ordinary women, and by workshops and online discussions.[31]

Instead of silencing reformists and human rights and women's activists, Ahmadinejad's government succeeded only in uniting them and making their demands more radical. Reformist and women's websites, now the only forum in which activists could still interact, continued the debate and became bolder in their critique of violations of what they considered to be their basic human rights. In this way, the public sphere that emerged after Khomeini's death and was nurtured during Khatami's presidency (1997–2005) not only survived, but became more and more oriented toward rights.[32]

RIGHTS AND SEXUAL HONOR IN THE 2009 ELECTION: A TURNING POINT

The 2009 presidential election, when Ahmadinejad stood for a second term, took place against the background of these developments. As the election date approached, reformist personalities and groups started to mobilize people to vote. Former President Khatami was persuaded to run again. The reformist Mehdi Karroubi, who had lost the 2005 election to Ahmadinejad, also announced his candidacy on behalf of the party he had formed then, shortly after resigning from all his governmental posts in protest at what he described, in an open letter, as election-rigging by the Revolutionary Guards and one of Khamene'i's sons. Then in March, Mir-Hossein Mousavi, the former prime minister, entered the presidential race after over twenty years of political silence, and before long Khatami withdrew in his favor. Having had Ayatollah Khomeini's backing and a popular base due to his welfare policies, Mousavi now stood as an independent centrist candidate. His campaign, reminiscent in many ways of Khatami's in 1997, was run by a group of young activists, who, lacking access to state-controlled media—in particular television, which was heavily biased toward Ahmadinejad—skillfully used digital media to reach large numbers of people.

On election day, June 12, the turnout throughout the country was high. But it was followed by what many have interpreted as a coup d'état by theocratic

[31] For the campaign, see <https://www.iranhumanrights.org/tag/one-million-signatures-campaign/>. For other campaigns, see <http://www.meydaan.com/english/>; this website has not been updated since July 2009 but contains important campaign documents.

[32] See Negin Nabavi, "From 'Reform' to 'Rights': Mapping a Changing Discourse in Iran, 1997–2009," in *Iran: From Theocracy to Green Movement*, ed. Negin Nabavi (London: Palgrave, 2012), pp. 39–54.

forces. From the beginning, numerous serious irregularities were reported: Revolutionary Guards and the Interior Ministry clamped down on Ahmadinejad's opponents; in many cases, they kept their representatives out of both polling booths and counting stations; they attacked Mousavi's campaign headquarters and arrested his aides and other prominent reformists and journalists. The official result was announced on TV only two hours after polling ended, declaring Ahmadinejad the winner with 63 percent of the votes, Mousavi second with less than half that, and the other two candidates, Karroubi and Mohsen Rezaie (a former head of the Revolutionary Guards), with single figures: there were indications that these proportions had been decided in advance of the polling.[33]

Mousavi and Karroubi refused to accept the results, and asked for a recount. On June 13, Ahmadinejad celebrated his victory, and in a provocative speech referred to those objecting to the poll as "dirt and dust" that would be soon washed away. On June 15, an estimated 2 million protesters marched through Tehran with the single slogan, "Where's my vote?" This was the biggest protest march since the 1979 Revolution, and a direct challenge to the theocratic forces. It was followed by more protests, which the government met with violence. In a much-awaited Friday prayer speech on June 19, Khamene'i, instead of attempting to find a healing formula, threw oil on the fire. He blamed foreign media for "doubts over election results," dismissed the protesters, and warned them of further government violence if they persisted. But the protests continued, leading to the formation of the popular movement for change, which came to be known as the Green Movement, under the joint—but very diffuse—leadership of Mousavi, Karroubi, and Khatami, with Rafsanjani attempting to mediate reconciliation with the Leadership.

In the 2009 election and its aftermath, both the protests of supporters of the Green Movement and the reactions of the regime were pervaded by implicit and explicit links between rights and honor—*haqq* and *namus*. This, as I have argued, was a by-product of the gender policies of the Islamic Republic and the politicization of sexual honor, which had been previously a private matter for the family and the local community. Not surprisingly, over the decades since the Revolution, many men and women, particularly the young, have come to challenge the rhetoric and values of honor, as a way of challenging the state's denial of their personal and political rights.

In my view, we can identify four key moments in the 2009 election and its aftermath that heralded a new phase in Iranian political culture which is bound to affect the deep structures of power. The first moment was the nature of women's political participation. For a long time, a division, if not an

[33] For an insightful analysis, see Farideh Farhi, "The Tenth Presidential Elections and their Aftermath," in *Iran: From Theocracy to Green Movement*, pp. 3–16.

antipathy, between "secularist" and "religious" women had marked the politics of gender. The distinction refers to political attitudes, not personal piety. "Religious" women, in the main, believed that the country's laws and social norms should be based upon Islam, while "secularist" women might be anti-clerical or advocate the complete separation of mosque and state. Many women of all persuasions backed the reformist President Mohammad Khatami because he promised concrete improvements in women's lives, but the divide lingered nonetheless.

On the eve of the 2005 election, at the end of Khatami's second term, when secularist women's groups organized a rally in front of Tehran University to ask for equality, framing their demands in constitutional terms, women from the official reformist parties did not join them. They did not want to break all ties with the establishment and to be seen as siding with the newly vocal secularist feminists, who for their part were keen to keep their distance from religious reformists.[34]

But four years later, in April 2009, 42 women's groups and 700 individuals, including both secularist feminists and religious women from the reformist parties, came together to form a Women's Convergence.[35] Without supporting any individual candidate, the coalition posed pointed questions to the field. They raised two specific demands: first, ratification of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which had been approved by parliament when the reformists were in the majority but was then rejected by the Guardian Council; and second, revision of Articles 19, 20, 21, and 115 of the Iranian constitution that enshrine gender discrimination. Using the press and new media, they put the candidates on the spot to respond. Women's demand for legal equality became a central issue in the campaign season. Distinguished filmmaker Rakhshan Bani-Etemad made a documentary, available on the Internet, which registered the voices and demands of these women and the replies of the candidates. Ahmadinejad was, of course, the only candidate not to appear.

The second moment in the campaigns was the appearance of Zahra Rahnavard at the side of—and even holding hands with—her husband, the candidate Mir-Hossein Mousavi. Though many women politicians have served

[34] See Mir-Hosseini, "Is Time on Iranian Women's Side?" and Mahsa Shekarloo, "Iranian Women Take on the Constitution," *Middle East Report Online*, July 21, 2006, <http://www.merip.org/mero/mero072105>.

[35] See my earlier analysis of the 2009 election, "Broken Taboos in Post-Election Iran"; see also Nayereh Tohidi, "Women and Presidential Elections: Iran's New Political Culture," *Informed Comment*, September 30, 2009, <http://www.juancole.com/2009/09/tohidi-women-and-presidential-elections.html>; and Fatemeh Sadeghi, "The Green Movement: A Struggle Against Islamist Patriarchy," in *Iran: From Theocracy to Green Movement* pp. 123–36.

in the Islamic Republic's legislature, they had been absent from high-level politics, and the 2009 campaign was the first time that a woman appeared as an equal partner and intellectual match for her man. Rahnavard, in fact, was the more charismatic and articulate of the couple. Her open support for women's rights and human rights changed the tone of the campaign. She was also blunt in many of her remarks, which inspired the youth of the country. For instance, in Mousavi's second campaign film, Rahnavard is shown in conversation with the renowned actress, Fatemeh Motamed-Arya. At one point, she complains that, in Iran today, "A woman does not even own her own body: If you go to the hospital for an operation, you need the permission of a man."

The third moment was in the election aftermath: the availability on the Internet of letters to male political prisoners—key reformist figures and people active in Mousavi's campaign—from their wives. What makes these often very affecting love letters especially significant is that many of the writers are women from religious backgrounds who have no qualms about speaking of their physical longing for their men and question the very justice of the system that has imprisoned them. They are breaking another taboo, according to which they should confine expressions of sexual desire and love to the private sphere. So the policies of the regime have generated another paradox: having politicized the sexuality and honor of all Iranian women, the regime now finds its own adherents taking this policy to an uncomfortable extreme—by making the personal political, in true feminist fashion.

The fourth and perhaps the most important moment was that the regime was caught breaking its own taboos, when the extensive sexual abuse and rape of detainees of both sexes were revealed. Those who demand political rights, the government implied, have no sexual honor. The imagination of the world was caught by the on-camera death of Neda Agha-Soltan—the 26-year-old philosophy student shot dead during the protests on June 26, 2009. But in my view, a more significant martyr was Taraneh Mousavi, a young girl who was detained, reportedly raped, and murdered; her body was burned and thrown out.

These atrocities, and the allegations of more, horrified the public—and many leading clerics. They discredited the "culture of hijab" that the regime had advocated for thirty years in the name of Islam and of protecting women and keeping society safe. The "Islamic brothers" were now implicated in the violation of the honor (*namus*) of the families that they were supposed to protect. The role played by defeated reformist candidate Mehdi Karroubi in the disclosure of these sexual abuses, his support for the victims, and the authorities' refusal to allow proper investigations, added further to the rumors and led gradually to other victims breaking their silence. One of Karroubi's witnesses, a male rape victim, refers to his decision to disclose what happened to him as "committing social suicide," which speaks to the power of the taboo—but then, once a taboo is broken, it loses its power. In December

2009, Britain's Channel 4 broadcast a television interview with a refugee member of the Basij, the paramilitary force charged with carrying out the arbitrary detention and abuse of protesters; he movingly detailed his horror at what occurred. "I have lost my world," he says, choking back tears. "I have lost my religion." The clip rapidly spread through Iranian cyberspace.

The fate of Majid Tavakoli, the student leader, is even more telling of the radical shift in Iranian gender politics. He was arrested after a fiery speech denouncing dictatorship during the demonstrations on National Student Day, December 8, 2009. Following his arrest, pro-government news agencies claimed Tavakoli had been caught trying to escape dressed as a woman, and they published a series of photographs showing him wearing a headscarf and a chador.

Attempts at flight in such gender-bending disguises are a classic trope in Iranian political history. The best-known instance in the Islamic Republic was when the first president, Abol-Hasan Bani-Sadr, after his deposition in 1981, allegedly fled the country in women's dress—so now the Fars News Agency, close to the Revolutionary Guards, put a photo of Bani-Sadr in a scarf next to that of Tavakoli. But pro-government media outlets chose to ignore the fact that, in pre-revolutionary Iran, clerics too, such as Ayatollah Bayat, were said to have evaded the Shah's authorities by concealing themselves beneath chadors.

To be nabbed in this act is portrayed by the state as doubly shameful: a prisoner so afraid of punishment that he literally denies his manhood. In this case, the shame was pictured not only draped over Tavakoli's head and shoulders, but also etched on his face—unshaven, his eyes downcast. The exposure of Majid Tavakoli's "cowardice" was intended to humiliate a hero of the student movement, but it backfired when an Iranian photographer invited men to post pictures of themselves wearing hijab on Facebook. Men responded en masse, inside and outside Iran, asserting, "We are all Majid."

The campaign in support of Tavakoli became an occasion for both solidarity and spirited debate among different elements in the Iranian opposition, as well as for condemnation of state-imposed hijab and gender discrimination, and a celebration of women's equality and their involvement in the Green Movement. "Majid Tavakoli Was Multiplied, Not Humiliated," reads one poster. The students issued a statement referring to Tavakoli as the "honour of the students' movement" (though the word for "honor" here, *eftekhar*, unlike *namus*, is neither sexual nor gendered). The statement stressed that what matters was resistance to injustice and the struggle for freedom, a struggle that would undoubtedly continue, whether in male or female clothing. Likewise, what Mohsen Rezaie, former head of Revolutionary Guard, had said during his unsuccessful election campaign came to haunt him: he had promised to defend people's vote like his *namus*. When he failed to join Mousavi and Karroubi in denouncing the results, countless comments on his website called him *bi-namus*, shameless.

After the events of summer 2009, the Green Movement moved beyond the stage of "Where is my vote?" to tackle a range of issues that animate the population, not just the restive middle-class urban youth, but many strata of society. The government, supported by Khamene'i, continued with a massive and brutal crackdown. Almost all reformist personalities, women's rights and human rights activists were either imprisoned or forced to leave the country, or were silenced in some other way. Ayatollah Montazeri, one of the founders of the Islamic Republic, who became the Green Movement's spiritual leader, died in December 2009. His seventh-day memorial was suppressed, his supporters were forced to withdraw from the streets, and they were inactive in public throughout 2010. But they came back on February 14, 2011, following Mousavi and Karroubi's call for a show of solidarity with the democracy movements in Tunisia and Egypt. This was the movement's last public manifestation; it was Valentine's Day—the day of lovers that in recent years has also been celebrated in Iran—a very curious coincidence! Soon after, Mousavi and Karroubi and their spouses were put under house arrest. Fatemeh Karroubi was released after a year, but the other three remain confined at the time of writing; and the brutal crackdown on dissent continued unabated.

The Islamic Republic survived, but its very basis was shaken; its legitimacy and its credibility were questioned by some of those who played a central role in its creation. Before his death, Ayatollah Montazeri had denounced the state as a religious dictatorship and declared that it was now neither Islamic nor a republic.[36] Economic mismanagement by Ahmadinejad's government, harshening US-initiated sanctions, the continuing external threat and confrontation with the West, and the Arab uprisings—all these left the theocratic forces with no other choice than to return to the ballot box in June 2013. The presidential elections were highly orchestrated, and the candidates handpicked; those with the slightest history of sympathy by association or action with the Green Movement were weeded out—notably, Rafsanjani was disqualified. The campaigns began in a low key, and it was only a week before election day that there was any momentum in the TV debates among the candidates. Apart from the alliance of moderate conservatives and reformists, what brought the victory of Hassan Rouhani—a pragmatic and moderate insider—was people's willingness to vote. Supporters of the Green Movement energized his election rallies with slogans in support of Mousavi and Karroubi and demanding the freedom of all political prisoners.

The convincing first-round victory of Rouhani, the candidate who was most articulate in his critique of Ahmadinejad's era, must be seen as a concession that people extracted from the theocratic and undemocratic elite now surrounding the Leader, among whom there is a very serious rift. Running under

[36] See Massoumeh Torfeh, "Neither Islamic nor a Republic," *The Guardian*, August 29, 2009, <http://www.guardian.co.uk/commentisfree/belief/2009/aug/29/iran-clergy-infighting-ayatollah>.

the slogan of "Prudence and Hope," Rouhani chose as his campaign emblem a key, implicitly for the locked doors behind which the representatives of the republican side of the state are kept.

At the time of writing (December 2016), Rouhani has not yet opened any locked doors. Despite some success in lifting social and political restrictions, he has not yet achieved the release of Mousavi or Karroubi and those arrested in the aftermath of the 2009 election. He has encountered fierce opposition from unelected elements in the state, which control vast economic, political, and military resources. His government, a mix of reformist and conservative personalities, is severely constrained by the legacy of Ahmadinejad's disastrous foreign and domestic policies and the acute economic crisis that the country faces. The removal of international sanctions, announced in January 2016, could strengthen the hand of reformists and moderate conservatives, and determine the success of Rouhani's government; it could also be decisive in reopening political space. In the two elections in February 2016, for two bodies that hardliners had dominated for many years, Rouhani and his reformist allies had partial successes. For the parliamentary elections, they ended the almost complete control of the hardliners; but they failed to do so in the elections to the Assembly of Experts (charged with choosing and supervising the Ruling Jurist). The outcome of the two elections in June 2017—for the presidency and the city councils—will, as ever, be determined both by the internal factional struggle and by international events, not least the actions of the new US administration.

CONCLUDING REMARKS: THE STRUGGLE CONTINUES

After over three decades of intense contestation between the "Islamic" and "Republican" components of the state, what has emerged is a wider confrontation between the backward-looking forces of autocratic and patriarchal despotism on the one hand, and the growing popular demand for free elections, the accountability of those in power, and the abolition of legal and extralegal discrimination between men and women on the other. The present younger generation knows that democracy and patriarchy are incompatible; and they are the future.

It is true that the reformist and democratic factions in the Islamic Republic have so far failed to bring tangible changes in the structures of power; they have lost many battles; they faced, and continue to face, many political setbacks. But they have had one major and lasting success: they demystified the power games that authorities conducted in a religious language and the rulers' instrumental use of "Shari'a" to justify their autocratic rule. It was this demystification that gave birth to the Green Movement in 2009—its advocates

are slowly but surely breaking down dichotomies such as "secular" versus "religious" democracy, or "Islam" versus "human rights" that infested Iranian politics over the course of the twentieth century.

The contestation between theocratic and democratic elements in the Islamic Republic is far from over. In 1989, it was partially managed by amending the constitution and divorcing *velayat-e faqih* from *marja'iyat*. How it plays out in the future partly depends on whether the proponents of clerical theocracy can accommodate the democratic and feminist aspirations of the citizens. The events of 2009–11 may prove to have been as important as those that brought about the 1979 Revolution. Despite the regime's propaganda and the brutal suppression, imprisonment, or exile of many leaders and rank-and-file supporters, the Green Movement's values and demands have gone deep into Iranian society, and are changing the political culture and dynamics of the Islamic Republic.[37] The movement's advocates remain active in cyberspace and outside Iran. New media is enabling them to bypass the authority of the state-controlled media's narrative to influence the public agenda and debate. What is certain is that Islamist ideology has lost much of its political luster and popular support; there is a popular rights movement that is seeking a definite separation of the religious institution from the state.[38]

The Iranian quest for democracy that started in 1906 has had its successes, but it has been regularly frustrated, either by the unresolved internal tensions between religion and secularism and between absolutism and democracy, or as a result of external interventions. One thread running through the quest from the start has been the struggle for national sovereignty and freedom from interference by Western powers. This common struggle united the diverse forces that made the 1979 Revolution, which was eventually appropriated by Islamist forces. The resultant Islamic Republic assumed the duty of protecting the *namus* of all Iranian women; but they also sought a closely related value on the world stage: *ehteram*, recognition and respect. This they have continually been denied, especially by their chief enemy, the US, whom they in turn have termed "the global arrogance." It became recognized that the chief motive on the Iranian side in the 2014–15 nuclear negotiations was the same: an insistence that Iran be respected as an equal partner. Rouhani's choice of Javad Zarif as chief negotiator was astute: he is an experienced diplomat, widely respected in the US and at the United Nations. While the Iranian regime may have lost the respect of many of its citizens, by infringing on both their honor and their political rights, I suggest that at the international level they are seeking the

[37] See, for instance, the contributions to Jahanbegloo, ed. *Civil Society and Democracy in Iran*; and Annabelle Sreberny and Massoumeh Torfeh, eds., *Cultural Revolution in Iran: Contemporary Popular Culture in the Islamic Republic* (London: I.B. Tauris, 2013).

[38] Farhad Khosrokhavar, "The Green Movement in Iran: Democratization and Secularization from Below," in Jahanbegloo, ed., *Civil Society and Democracy in Iran*.

respect that in some ways transcends, or perhaps amalgamates, both national honor and international rights. But what the Islamic Republic's clerical theocrats have so far failed to understand is that this cannot be achieved without honoring its republican side. The "culture of hijab" and the regime's ability to manipulate the discourse of honor have passed their sell-by date, and a "culture of rights" is taking over the popular imagination. For many Iranians, *haqq* has become as important as *namus*.

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10

Women's Rights and Democratization in Morocco and Tunisia

Valentine M. Moghadam

INTRODUCTION

The relationship between democratization and women's participation and rights has been the subject of a large literature on women and the "third-wave" democratic transitions of 1975–90.[1] Countries of the Middle East and North Africa (MENA) were not part of that wave, although studies documented an emergent civil society as well as the activities of women's rights organizations.[2] The Arab Spring events of 2011 seemed to suggest that MENA had caught up with democracy's third wave, but the road since then has been rocky to say the least, with varied trajectories and outcomes. In 2011, Morocco and Tunisia saw different protest dynamics and outcomes, and at the time of writing they represent the two positive cases of the Arab Spring, especially when compared with the repression or violent contention that plagued Bahrain, Libya, Syria, and Yemen. Elsewhere, I have suggested that the different Arab

[1] According to Samuel Huntington, democracy's third wave began in the 1970s with the end of authoritarian or military rule in Greece, Portugal, and Spain, followed by Latin American countries, South Korea, and the Philippines, and ending with Eastern Europe and the former Soviet Union in 1989–91. Although Huntington ended his analysis in 1990, South Africa's democratic transition is generally agreed to be part of the third wave. See Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991). On women, gender, and democratic transitions, see Georgina Waylen, *Engendering Transitions: Women's Mobilizations, Institutions, and Gender Outcomes* (London and New York: Oxford University Press, 2007).

[2] See Augustus Richard Norton, ed. *Civil Society in the Middle East*, vol. 1 (Leiden: E. J. Brill, 1995); Jillian Schwedler, ed. *Toward a Civil Society in the Middle East? A Primer* (Boulder, CO: Lynne Rienner, 1995); Valentine M. Moghadam, *Women, Work, and Economic Reform in the Middle East and North Africa* (Boulder, CO: Lynne Rienner Publishers, 1998); and Valentine M. Moghadam, "Engendering Citizenship, Feminizing Civil Society: The Case of the Middle East and North Africa," *Women & Politics* 25/1–2 (2003): 63–88.

Spring trajectories and outcomes are explained by a set of endogenous and exogenous factors and forces, one of which pertains to the strength, visibility, and influence of the women's rights movements before and during the uprisings. That is, those countries that had seen independent feminist activism and institutional gains for women's rights prior to the protests were most likely to experience relatively smooth democratic transitions.[3] Here, I elaborate on my argument regarding the relationship between democratization and women's rights through an analysis of Morocco and Tunisia. Questions addressed are: How were women's rights advanced during the authoritarian period? How did these gains, and the activities of the feminist associations, influence the nature of the protests and the ensuing political changes? To what extent does the secular–religious divide obtain in Morocco and Tunisia, particularly with respect to the expansion of women's participation and rights?

As part of the Maghreb geocultural subregion that also includes Algeria, Morocco and Tunisia share an experience of French colonialism; retain some francophone identity as well as French-influenced institutions such as the education system, the judiciary, and trade unions; and are home to prominent women's rights groups. Contemporary feminist activism dates back to the 1970s, when women and development study groups were formed. In the 1980s, academics and activists mobilized to warn about the growing Islamist influence, and in the latter part of the 1980s, they became part of feminist sociologist Fatima Mernissi's Maghreb-wide anti-fundamentalist network. In the early 1990s, feminists from Algeria, Morocco, and Tunisia formed the Collectif 95 Maghreb-Egalité to advocate for egalitarian family laws and full citizenship for women, and they were able to influence the passage of a number of key legal reforms and policy initiatives for women's rights. A common feature of Maghrebian feminism, especially when compared with women's rights groups elsewhere in MENA, is attention to labor and social rights issues as well as to the enhancement of women's civil and political rights. This they achieve in part through cooperation with the trade unions of their countries.

Political opportunities—such as the environment of "state feminism" that Tunisian feminists enjoyed under both Presidents Bourguiba and Ben Ali, or the presence of elite allies within government, which Moroccan feminists experienced, beginning in the late 1990s—as well as a capacity for organizing, mobilizing, and effective advocacy, have enabled women's rights groups in Morocco and Tunisia to advance their agenda and to face conservative Islamist movements. With their activism and agenda-setting, Maghrebian

[3] I discuss this further in Valentine. M. Moghadam, "Democratization and Women's Political Leadership in North Africa," *Columbia Journal of International Affairs* 68/1 (Fall/Winter 2014): 35–53; see also Valentine M. Moghadam, *Modernizing Women: Gender and Social Change in the Middle East*, 3rd edn (Boulder, CO: Lynne Rienner Publishers, 2013).

women have been major contributors to, and participants in, civil society and democracy movements; they see a democratic polity as both a desirable alternative to authoritarianism and a pathway to their own equality and rights.

This chapter examines the activities of women's rights networks and associations in Morocco and Tunisia since the early 1990s, their relations to both transnational feminist networks and the UN's global women's rights agenda, the major campaigns and coalitions they have launched or joined, and their contributions to policies, practices, and discourses of democratization in their respective countries. It describes how the women's rights movements and "modernizing women" were situated in the Arab Spring, the constitutional and societal implications of the demand for women's full and equal citizenship, and differences with the Islamist discourse. The research is based on the relevant secondary sources, my observations and interviews during visits to the two countries beginning in 1990, and exchanges I have had over nearly a decade with Khedija Arfaoui, a now-retired professor and long-standing Tunisian women's rights activist.

ADVANCING WOMEN'S RIGHTS UNDER CONDITIONS OF AUTHORITARIANISM

As Mounira Charrad has documented, the postcolonial states in the Maghreb acted in different ways to accommodate the traditional male elites. In Tunisia, the French-educated lawyer Habib Bourguiba managed to craft a modern constitution with no mention of Shari'a law. Adopted in 1959, the constitution did, however, construct an Arab-Muslim identity for Tunisia in Article 1: *Tunisia is a free and sovereign state; its religion is Islam; its language is Arabic; and its political system is a republic*. Article 5 guaranteed religious freedom within the confines of public order. The 1956 Code du Statut Personnel (CSP, also known as the Madjala), which governed family life and the status of women, was considered the most forward-looking and modern in the Arab world. It made no mention of the Shari'a, banned polygamy, and gave women the right to divorce, although inheritance remained in accordance with Islamic law, and thus privileged male kin, and the law barred Muslim women from marrying non-Muslim men. The CSP was then justified in terms of consistency with the Hanafi and Maliki rites and with the right of Muslims to *ijtihad*, or reinterpretation of religious texts to conform to social reality, even while Bourguiba and his supporters viewed it, along with the constitution, as symbols of Tunisia's republican modernity. In contrast, Morocco was ruled by a king with absolute powers who was also known as "Commander of the Faithful." Given Morocco's more traditional kin-based social structure, the family law that was adopted, known as the Moudawana, was among the most

patriarchal in the Muslim world.[4] This did not sit well with the small but growing population of educated women in Morocco, especially those on the political left. The two divergent tracks of the independent Moroccan state—the "traditionalization" of women's roles inscribed in the 1957 Moudawana, and the gradual modernization and advancement of women's status through education—represented the ambivalence of the neopatriarchal state.

In both countries, the immediate postcolonial period saw women involved in either official women's organizations or charitable associations funded by the government and staffed by women from elite families. New organizations emerged in the 1980s and 1990s in the socioeconomic and political context of the rise of Islamic fundamentalist movements, political liberalization (albeit managed and limited) following the end of the Cold War, and the global diffusion of the UN's women's rights agenda in the aftermath of three world conferences on women.[5] These included professional associations, women's sections of political parties and trade unions, women-in-development non-governmental organizations (NGOs), research and policy centers and women's studies institutes, and women's rights or feminist organizations. While practicing Muslim women certainly were part of these organizations, the agendas tended to be non-religious and devoid of the values or objectives of the growing movement of political Islam.

In Tunisia, the Women's Condition Study Club celebrated International Women's Day on March 8, 1980, and subsequently a group of women intellectuals formed the Tahar Haddad Club—named after a famous liberal thinker—which became a center for the discussion of social problems and women's rights. Themes included low-income and rural women's precarious conditions, the plight of divorced mothers without family support or resources, girls forced to leave school, household violence, and media images of women. A bilingual (Arabic and French) feminist magazine called *Nissa* (*Woman*) appeared in 1985; feature articles over the first year of publication included discussions of the problem of illegitimate children, the personal status laws of Tunisia and Egypt (both under attack that year), the Israeli bombing raid of the PLO headquarters in a suburb of Tunis, the pros and cons

[4] For details, see Mounira Charrad, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco* (Berkeley, CA: University of California Press, 2001); Jocelyne Cesari, *The Awakening of Muslim Democracy: Religion, Modernity, and the State* (New York: Cambridge University Press, 2014), p. 69.

[5] The conferences took place in 1975 in Mexico City, 1980 in Copenhagen, and 1985 in Nairobi; the fourth conference convened in Beijing in 1995. The UN's global women's rights agenda includes the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the 1985 Nairobi Forward-Looking Strategies (following the UN's third world conference on women); the 1995 Beijing Platform for Women; UN Security Council Resolutions 1325 and 1820 on women, war, and security; and the Millennium Development Goals of 2000–15, especially Goal 3: to end gender inequalities in schooling and political participation.

of sex-segregated activities, the risks of childbirth, and feminism. The magazine folded in 1987 mainly because of disagreements among its staff members, some of whom went on to form or join l'Association Tunisienne des femmes démocrates (ATFD) and l'Association des femmes Tunisiennes pour la recherche sur le développement (AFTURD), which would come to have close ties to the Women's Commission of the General Union of Tunisian Workers (UGTT). Formed in 1989, the two women's rights groups became known as fiercely independent and autonomous from the state, although members did engage with some initiatives of the official women's organization, l'Union national des femmes Tunisiennes (UNFT), and the state-affiliated Association of Tunisian Mothers.[6]

Political opportunities specific to Tunisia, even in an authoritarian context, enabled the women's rights movement to grow. The Tunisian government signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in July 1980 and ratified it in 1985. In 1982, Tunis was host to the United Nations Educational, Scientific and Cultural Organization's (UNESCO's) Expert Meeting on Multidisciplinary Research on Women in the Arab World. Khedija Arfaoui has argued that government policies and programs enabled the emergence of women's organizations and other NGOs in that period. President Ben Ali, who portrayed himself as a champion of women's rights, advanced Tunisia's state feminism by enabling the establishment and funding of the women's policy agency Centre de recherche et d'étude pour la diffusion du français (CREDIF), which produced research on women's labor force participation, problems associated with the implementation of women's legal rights, the conditions of rural women, and the situation of poor urban women. Tunis also hosted the Center of Arab Women for Training and Research (CAWTAR), the region-wide women's research and policy agency whose work was largely funded by the World Bank, the United Nations Development Programme (UNDP), and Saudi Arabia.

In Morocco, educated women largely from the political left, concerned about women's subordination under the Moudawana, produced the periodical *8 mars/Thamania mars* and formed l'Union de l'Action Féminine (UAF) and l'Association démocratique des femmes du Maroc (ADFM).[7] As the country slowly ascended from the repressive "years of lead" (1956–99) and King Hassan II permitted some political liberalization, political parties began to regroup and media became more expansive. The One Million Signatures

[6] See Kevin Dwyer, *Arab Voices: The Debate on Human Rights in the Middle East* (Berkeley, CA: University of California Press, 1991); and Khedija Arfaoui, "Origins of the Tunisian Women's Movement," in *Feminisms, Democratization and Radical Democracy: Case Studies of South and Central America, Middle East, and North Africa*, ed. Graciela DiMarco and Costanza Tabbush (Buenos Aires: UNSAMEDITA, University of San Martín Press, 2011).

[7] See Zakia Salime, *Between Feminism and Islam: Human Rights and Sharia in Morocco* (Minneapolis, MN: University of Minnesota Press, 2011).

Campaign launched by UAF resulted in some amendments to the family law in 1993, and in 1998 the formation of a progressive government under Prime Minister Abderrahame Youssoufi provided the feminist organizations with a more favorable environment for the goal of achieving an egalitarian family law.

The National Action Plan for Integrating Women in Development—known by its French acronym PANDIF—was largely a program for women's socio-economic participation, but it included a proposal to reform the family law and thus enable more female mobility outside the home. Both the women's rights movement and the government were challenged by the growing Islamist movement, which called the initiative culturally alien and contrary to religious values.

National, Regional, and Transnational Activism

Casablanca was home to the female-owned publishing house Editions Le Fennec, which produced a series of books in the 1990s on women and the law in Algeria, Morocco, and Tunisia. These books examined in detail the family codes and legal status of women in each country and discussed the rise of *intégrisme*, or Islamic fundamentalism, and the threat it posed to women's advancement. Another concern of the women's rights groups was economic restructuring.

The Maghreb participates in the world economy and world society, which makes it vulnerable to the vagaries of global capitalism and the recipient of global discourses and norms.[8] Thus, when states began implementing structural adjustment policies from the late 1970s into the 1990s, it was not just unions, but also the burgeoning feminist groups which began to raise objections. While the unions protested on the streets of the major cities of Morocco and Tunisia, the feminist groups wrote critiques in their domestic publications as well as in documents prepared for the UN's Third World Conference on Women, in Nairobi in 1985, and the Fourth World Conference, in Beijing in 1995. Moroccan and Tunisian women's rights advocates were present at a

[8] The capitalist world economy—with its three zones of core, peripheral, and semi-peripheral economies—is part of the modern world system, which also includes a hierarchical and unequal interstate system. World polity scholars emphasize the role of international organizations in the making of a "shared modernity," with isomorphism in bureaucracies and even standards and norms. See Immanuel Wallerstein, "Globalization or the Age of Transition? A Long-Term View of the Trajectory of the World-System," *International Sociology* 15/2 (2000): 249–65; Christopher Chase-Dunn, *Global Formation: Structures of the World Economy*, 2nd edn (Totowa, NJ: Rowman & Littlefield, 1998); John Boli and George Thomas, "World Culture in the World Polity: A Century of International Non-Governmental Organization," *American Sociological Review* 62 (April 1997): 171–90.

regional conference of Arab women's NGOs, which took place in Amman, Jordan, in November 1994, in advance of the Beijing conference. The two-week deliberations resulted in a document entitled "Work Program of the Non-Government Organizations in the Arab Region," and included a discussion of the negative fallout from indebtedness, poverty, unemployment, and outmigration in search of employment; submission to the dictates of the International Monetary Fund (IMF); and inadequate health and social services, including services cut by structural adjustment policies. The inclusion of this issue can be attributed to the diffusion of the transnational feminist critiques since the 1980s, to the presence of left-wing Arab women and their awareness of union protests, and to the alignment of this document with the draft Platform for Action of the Beijing conference. The document also took a strong stand against invasion and occupation, and declared that "people should never be subject to economic sanctions and starvation," which at the time were references to Palestine, Kuwait, and Iraq. At the parallel NGO Forum in Beijing, women from the Collectif 95 Maghreb Egalité organized a Women's Parliament to call for family law reform, and distributed pamphlets and a book on the discriminatory laws faced by women in the region.[9]

The Collectif continued to launch campaigns to improve women's legal status and social positions and to ensure that their governments implemented international agreements. While recruiting from within their own borders, holding meetings in the three countries, and cooperating on seminars, books, and media activities, the group also relied on the support of other transnational feminist networks, such as Women Living under Muslim Laws (WLUML) and the Women's Learning Partnership for Rights, Development, and Peace (WLP). After the Collectif produced the 2003 study of family law across the Maghreb, entitled *Dalil pour l'égalité dans la famille au Maghreb* (also available in Arabic), the WLP's translation service provided an English-language version which became available in 2005. Some Collectif members forged ties with the Malaysian women's rights group Sisters in Islam, which was associated with WLUML and WLP and in 2009 launched Musawah, a transnational initiative and network aimed at ensuring that Muslim women are treated equally in the families and communities of Muslim societies.[10] This network for the equality and rights of women in Muslim communities should be distinguished from any Islamist women's group or network. Like the Collectif, WLUML, and WLP, Musawah is opposed to polygamy, child marriage, and

[9] I attended the November 1994 Amman meeting in my capacity as a UN staff member and was given a copy of the outcome document. I also attended both the NGO Forum and the intergovernmental meeting in Beijing in September 1995. For details, see Moghadam, *Women, Work, and Economic Reform*, pp. 216–17.

[10] The project was initiated by SIS cofounder Zainah Anwar, with a global meeting in February 2009 that brought together over 250 Muslim scholars and feminist activists from nearly 50 countries.

inequality within the family, issues that Islamist women's groups do not necessarily adopt.

In the 1990s and into the new century, the global diffusion of the UN's women's rights agenda—including the mandate to "mainstream" gender in all policies, programs, and projects, and to establish or strengthen the "national women's machinery" and women's policy agencies—had some effect in Morocco and especially in Tunisia. The male elites in both countries may have been ambivalent about women's equality, but their involvement in the world polity led to measures and institutions in favor of women's advancement. Thus, women's rights advocates were able to push for legislation on violence against women, equal nationality rights, policies to ease the burden of working women, and family law reform.

Advancing women's rights in Morocco and Tunisia, even under conditions of authoritarianism, reflected grievances, values, and aspirations associated with changes in the characteristics of the female population. Educational attainment, the rising age at first marriage, smaller family size, women's presence in an array of professional fields and occupations, travel abroad, access to satellite TV, and knowledge of information technology facilitated international connections and fostered civic and feminist activism. In this respect, the formation of women's rights organizations, with work programs and agendas, volunteers and paid staff members, and a public presence, was politically and culturally significant. In the absence of large-scale female participation in the labor force or in government, critically minded educated women could establish their authority, take part in decision-making, engage with various publics, develop their civic skills, and exercise political rights in their own organizations. Participation in the media and cultural production and creating a feminist press gave women access to the public sphere and enabled engagement in national debates and dialogues.

CAMPAIGNS, COALITIONS, AND ACHIEVEMENTS

In the late 1990s and into the new century, the women's rights groups in Morocco and Tunisia conducted research and advocacy around reform of patriarchal Muslim family laws, criminalization of violence against women (honor killings, sexual harassment on the streets and in workplaces, domestic violence), the right of women married to foreigners to obtain citizenship rights for their children, and enhancing women's participation in political bodies and in the workforce through appropriate institutions and policies. In Tunisia, the issue of equal rights in inheritance was also, audaciously, raised.

Responding to women's rights activism, the Tunisian state introduced a series of positive amendments to the family law in 1993. The mother's consent

was now required in addition to the father's for the marriage of a minor; a wife's duty of obedience to her husband was replaced by her right to be treated with care and concern; she gained the right to participate in the management of the family's affairs, such as the children's education, travel, and financial matters; and the couple could choose joint or separate financial holdings, to be stipulated in the marriage contract. If a child is born out of wedlock and the father is known, the child carries the father's name, has the right to the father's support until reaching adulthood, and inherits the same portion as a daughter. In 1998, a law criminalizing crimes of honor was adopted, and the punishment for domestic violence was made double that of an ordinary offense.

The ATFD secured the passage in 2004 of the country's first legislation combating sexual harassment; earlier, it had established the first *centre d'écoute*, or listening center and hotline for female victims of domestic violence and sexual harassment.[11] Khedija Arfaoui explains that ATFD had started working on the issue in 1991 and cites a report by Ahlem Belhaj, a former ATFD president, delivered at a seminar organized by CAWTAR in Tunis in September 2006, to the effect that initially the group lacked a strategy, but the project was so well received that the Association had to find a way to tackle the flow of women seeking help. In 1993, a person on duty was appointed to receive those women before the ATFD was able to create a real center where women would be listened to and their problems addressed. A commission also was formed to identify strategies to tackle growing reports of domestic violence.[12]

On Women, Work, and Social Rights

As more Moroccan and Tunisian women entered the labor force, whether as professionals or factory workers, attention turned to improving conditions, laws, and norms pertaining to women and work. Tension grew among the emerging generation of Tunisian young women, who rebelled against traditional views about the limits imposed on their roles in the home and work spheres. According to Arfaoui, mothers continued to teach their daughters that their responsibility was to care for the home. As the sons were expected to become breadwinners, they were given more freedom while of mobility, whereas daughters were to stay at home, away from temptations and untoward encounters. But, combined with the effects of education and constitutional principles of equality between the genders, the CSP served as a "platform for

[11] The counseling center and hotline set up by ATFD was followed by one set up by the official women's organization, UNFT, in 2004.

[12] This information is from Arfaoui, "Origins of the Tunisian Women's Movement."

second generation reforms that are allowing women to . . . share power with men . . . on the forefront of the national scene."[13]

At the 2004 Arab League Summit held in Tunis, the host nation called on the member states to "consider the promotion of the rights of Arab women as a fundamental axis of the process of development and modernization of Arab societies."[14] At the same time, President Ben Ali offered women the possibility to work part-time for three-quarters of their salary and the promise of a full retirement. Tunisian feminists argued instead for nurseries and kindergartens for the children of working mothers, because, by 2005, Tunisian women's representation in the workforce had risen to 24.3 percent, compared with less than 6 percent in 1966. Women were found in all the sectors of the economy: 43 percent in manufacturing industries, 32 percent in agriculture and fishing, and 21 percent in administration. Fully 72 percent of pharmacists were women, and females made up 42 percent of the medical profession, 34 percent of journalists, 51 percent of primary schoolteachers, 48 percent of secondary schoolteachers, and 40 percent of the teaching staff in higher education. Some 10,000 women were company directors in 2004. In the legal sector, women represent 27 percent of judges and 31 percent of lawyers. In 2004, a woman was appointed public prosecutor and another one judge at the Directorate General of the Higher Institute of Magistrature. Several Tunisian women also acquired international renown. In April 2007, Souhair Belhassen was elected president of the Fédération Internationale des Droits de l'Homme (FIDH); Khedija Cherif was elected general secretary and Sophie Bessis assistant secretary general.[15] In such a context of occupational distribution and professional achievement, how could Tunisian feminists agree to the overall marginal position of women in the workforce?

In Morocco, women's rights and human rights advocates turned their attention to the prevalence of child labor, especially among young girls from the countryside who worked long hours as maids in urban households. Another concern was sexual harassment of women factory and office workers. In late 1995, ADFM organized a campaign to support the two-week strike by women workers at the Manufacture du Maroc factory outside Rabat over repeated sexual harassment and other outrageous managerial practices.[16]

[13] Abdelaziz Barrouhi, "Un cas à part" ["A Special Case"], *Jeune Afrique* 2381 (août 27–septembre 2, 2006): 39.

[14] Lilia Labidi, "The Nature of Transnational Alliances in Women's Associations in the Maghreb: The Case of AFTURD and ATFD," *Journal of Middle East Women's Studies* 3/1 (2007): 7.

[15] In an article entitled "Governance, Women, and the New Tunisia," *Politics and Religion* 8/1 (2014): 135–64, Khedija Arfaoui and Jane Tchaicha note that the state media made no mention of these achievements.

[16] I discuss this at greater length in Moghadam, *Women, Work, and Economic Reform*, pp. 72–3.

Advocacy around sexual harassment and workplace conditions, as well as high female unemployment, continued into the new century. In February 2004, a coalition to ensure the implementation of Morocco's new labor law was launched by the Centre des Droits des Gens, the Ligue Démocratique pour les Droits des Femmes, and the Association Marocaine des Droits des Femmes, and in November of that year it was joined by the Union Marocaine du Travail, the Confédération Démocratique du Travail, and the Association Marocaine des Droits Humains. The campaign also issued a report entitled *Protection des Droits des Femmes*, which, among other things, pointed out that Morocco had yet to sign and ratify International Labour Organization (ILO) Convention 183 on maternity protection, designed to protect the rights of working mothers. In addition to the various coalitions and campaigns, the Réseau Annaruz, a network of over forty women's rights associations and centers, coordinated many activities and prepared various reports. Such concerns and advocacy point to the Maghreb's social feminism.

Support for CSP and Expansion of Women's Rights

In 2006, Tunisia celebrated the fiftieth anniversary of the CSP, an event commemorated with much ceremony by Tunisian feminists and human rights activists from the ATFD, AFTURD, the Tunisian League of Defense of Human Rights, the UGTT's National Commission of Working Women, the Tunisian branch of Amnesty International, and the Collectif. ATFD and AFTURD published "15 Arguments for inheritance equality between the sexes" that ended with the demand that it was time to abolish privileges, modify the inheritance law, and establish inheritance equality between the sexes. That same year, AFTURD published *Egalité dans l'Héritage: Pour une citoyenneté pleine et entière*, a book on inheritance in two volumes.[17] In hindsight, that celebration and the subsequent discussion presaged the intense debates and divisions that would appear after January 2011.

In late January 2009, ATFD organized, in Tunis, a Maghreb-wide seminar on "Equality in Inheritance" entitled "Nothing Justifies Discrimination in Inheritance." Sana Ben Achour, a law professor and ATFD official, said that although no woman had yet filed a lawsuit to protest unfair distribution of inheritance, it was likely to occur in the future, given that it clashed with the equality clause in the Tunisian constitution. With an eye to other parts of the Muslim world, where *ijtihad*—reinterpretation of the holy texts in light of contemporary realities—was a strategy used by women's rights scholars and

[17] Vol. 1: *Histoire, Droits et Sociétés* (Tunis: AFTURD, 2006); vol. 2: *Plaidoyer pour l'Egalité dans l'Héritage* (Tunis: AFTURD, 2006).

activists, lawyer Alya Chérif-Chammari suggested that it could be deployed in Tunisia to argue for inheritance equality.

Research on women's movements has highlighted their democratic orientation, in terms not only of their preferred nomenclature, but also their goals and internal practices.[18] In Tunisia, this was evident from the following passage in a 2008 AFTURD statement: "Our work on behalf of women's empowerment is also aimed at political change and is part of the movement for democratization." The question of hijab came up at the ATFD Congress in November 2008, and Khedija Arfaoui has written that although Tunisian feminists disagreed with hijab and were concerned about its growing visibility within the female population, they did not endorse the state's prohibition. Again, the concern about hijab seemed to anticipate the challenges that secular feminists and their male allies in the universities would face after the January 2011 Revolution.

At the same time, events in the years before the revolution suggested growing opposition to President Ben Ali and the police state from across the political spectrum. A rally was held to protest a constitutional amendment that would enable Ben Ali to run for a longer term. Worker protests took place in Gafsa and other industrial enclaves. In 2009, Khedija Arfaoui was called before the police to explain her internet activity. In May 2010, an anti-censorship protest involved many bloggers, including the young female bloggers Emna Ben Jemaa and Lina Ben Mhenni. Critically minded NGOs made extensive use of social media, and it was clear that there was much dissatisfaction with the status quo in the years before Mohammed Bouazizi set himself on fire.

Reforming the Moudawana and Expanding Women's Rights in Morocco

The reform of Morocco's highly patriarchal Moudawana and its replacement in 2004 with a more egalitarian set of laws and norms for marital life and family affairs was the end result of more than a decade of women's rights coalition-building, advocacy, and lobbying, and it paralleled a period of political liberalization in the late 1990s. As noted earlier in this chapter, both the feminist initiative and the Youssoufi government were challenged by the growing Islamist movement in Morocco. In particular, family law reform was

[18] See Yesim Arat, "Toward a Democratic Society: The Women's Movement in Turkey in the 1980s," *Women Studies International Forum* 17/2–3 (1994): 241–8; and Yesim Arat, "Democracy and Women in Turkey: In Defense of Liberalism," *Social Politics: International Studies in Gender, State, and Society* 6/3 (1999): 370–87; Andrea Barron, "The Palestinian Women's Movement: Agent of Democracy in a Future State?" *Middle East Critique* 11/1 (2002): 71–90; Karen Beckwith, "Mapping Strategic Engagements: Women's Movements and the State," *International Feminist Journal of Politics* 9/3 (2007): 312–38.

opposed by Islamist women such as Nadia Yassine, head of the women's section of the Jama'at al-Adl wal Ihsan (Justice and Spirituality Association).[19] When a 2003 terrorist bombing in Casablanca forced the Islamists to retreat from their open hostility to the PANDIF, the family law reform was approved by a royal commission and, early the next year, adopted by parliament. The women's rights groups were jubilant.[20] As the ADFM noted:

> The new law embodies the principle of shared family responsibilities between the spouses. It was the product of extensive public discussion of challenges women faced under the previous law, as well as analysis of the implications of human rights standards and religious texts. To help ensure effective implementation of the new rights that have been guaranteed, the legislative changes were accompanied by the creation of dedicated Family Courts, and the Ministry of Justice is enhancing the provision of support services and training for judges and court officials.

Introduction of the new family code was part of a broader wave of reforms within the country, which had gained momentum at the turn of the new century. In 2001, women politicians from the main political parties—Istiqlal, Union Socialiste des Forces Populaires, the leftist Parti du Progrès et du Socialisme, and the Mouvement Populaire, among others—established a network for the establishment of a women's quota system, with the result that the 2002 electoral code introduced a "national list" with thirty reserved seats for women, or a 10 percent parliamentary quota.[21] More progress followed. The new labor code (2004) introduced the concept of sexual harassment in the workplace; the penal code criminalized spousal violence; and in 2007 the nationality code gave women and men equal rights to transmit nationality to their children, as required by CEDAW's Article 9.[22] Among the women MPs and ministers who played an important role in pushing for family law reform and reform of the nationality law were Aicha Belarbi and Nouzha Skalli.[23]

[19] In her book, Zakia Salime argues that the feminist and Islamist women's organizations interacted and learned from each other. However, she does not provide evidence for this, and certainly not for the period prior to the family law reform. Instead, the two sides appear to have been ideologically distant, a perception confirmed by a number of interviews and conversations I have had over the years with various Moroccan feminists.

[20] At a May 2004 meeting in Helsinki, Finland, I had the opportunity to hear Latifa Jbabdi speak eloquently and emotionally about the hard road to the family law reform.

[21] James M. Sater, "Changing Politics from Below? Women Parliamentarians in Morocco," *Democratization* 14/4 (August 2007): 723–42. Between 2002 and 2007, the major political parties had no more than six women each, though, given the total seats won by the parties, the Justice and Development Party (PJD) had the highest proportion, with a 14% female share. See Hanane Darhour and Drude Dahlerup, "Sustainable Representation of Women through Gender Quotas: A Decade's Experience in Morocco," *Women's Studies International Forum* 41/part 2 (2013): 132–42.

[22] For details and full references, see Moghadam, *Modernizing Women*, ch. 7.

[23] Aicha Belarbi was State Secretary for Foreign Affairs in the Abdelrahman Yousefi government of 1998–2002 and later ambassador to the European Union (EU); she is a founder of the

In June 2006, human rights and women's rights organizations from the region met in Morocco to launch the Rabat Appeal for the regional campaign Equality Without Reservations, which called on governments in the region to take immediate action for the ratification of CEDAW and the withdrawal of all reservations; the implementation of CEDAW and the harmonization of national legislation with CEDAW provisions on civil, political, economic, social and cultural rights; and the ratification of the Optional Protocol to CEDAW. In 2010, Moroccan feminist groups formed a coalition with physicians' groups and human rights organizations, called the Springtime of Dignity, to urge the government to revise the penal code toward criminalizing all forms of violence against women and to "preserve the dignity of women, their physical and psychology integrity, and their autonomy."[24] Among other priorities, ADFM called for more women police officers to deal with violence cases, and established Nejma centers for female victims of violence as well as a network of *centres d'écoute*, listening centers with hotlines. The UAF similarly established the Annajda Center, with several locations across Morocco.

Meanwhile, the participation of women in governance steadily increased. A new cabinet formed in Morocco in October 2007 included seven women—the highest female representation in the cabinet since the country gained independence. Subsequently, CEDAW reservations were removed and a process of harmonizing domestic laws with each other and with the international women's rights agenda was launched. Thus, women in political society and civil society were able to collaborate for the purposes of effecting legal and policy changes.

The contemporary discourses of women's participation, human rights, civil society, modernity, citizenship, and democratization reflect the changing socio-political dynamics of women's activism. Advocacy becomes more pointed, with a focus on the need to reform discriminatory family laws and bring them in line with constitutional guarantees of equality and with CEDAW; to criminalize domestic violence and prohibit sexual harassment; to grant women equal nationality rights so that their children may acquire citizenship through the mother and not just the father; and to create mechanisms to facilitate women's

Moroccan Organization of Human Rights. Nouzha Skalli of the Party of Progress and Socialism (PPS) was elected to parliament in 2002 and in 2007–11 was Minister of Solidarity, Women, Family, and Social Development.

[24] For details, see the Women's Learning Partnership for Rights, Development, and Peace, <http://www.learningpartnership.org/morocco>. See also the following by Loubna Hanna Skalli, "Women, Communications and Democratization in Morocco," in *Empowering Women: Participation, Rights, and Women's Movements in the Middle East, North Africa, and South Asia*, ed. Valentine M. Moghadam (Syracuse, NY: Syracuse University Press, 2007); Loubna Hanna Skalli, "Constructing Arab Female Leadership: Lessons from the Moroccan Media," *Gender & Society* 25/4 (August 2011): 473–95.

access to employment and political decision-making. The demands and strategies are indicative of the political maturity of the women's rights movements in Morocco and Tunisia. Those groups are, moreover, among the more democratic sociopolitical forces in society.

Table 10.1 summarizes key features of women's legal status and social positions in Morocco and Tunisia on the eve of the Arab Spring and in

Table 10.1 Gender Indicators, Tunisia and Morocco, 2010–11.

Gender Indicators	Tunisia	Morocco
Socio-demographics*		
Mean age at first marriage, F	27	26
Total fertility rate	1.9	2.4
Paid labor force, F %	25%	28%
Tertiary enrolment, F % age group	40%	12%
Female share of university teaching staff	42%	17%
Political empowerment measures		
Women in judiciary**	28% of total (first appointed 1965)	610, or 19% of total (first appointed 1960)
Female share, seats in parliament (1995–2010)	23–28%	11% (after 2002 quota)
Feminist leaders in civil society/ public intellectuals	Alya Chérif Chammari (human rights/women's rights lawyer); Hafidha Chékir (ATFD); Amel Grami (Islamic law scholar); Samia Letaief (UGTT & AFTURD)	Fatima Mernissi (feminist sociologist and Islamic law scholar); Latifa Jbabdi (UAF); Amina Lemrini, Rabéa Naciri (ADFM); Nadia Yassine (Islamist Party)
Prominent women in political parties	Maya Jribi, coleader of Progressive Democratic Party	Aicha Belarbi, USSP; Nouzha Skalli, PPS
Government in 2011	Parliamentary	Constitutional monarchy
Family law	Liberal CSP since 1956; 1993 amendments	2004 reform of patriarchal Moudawana

Sources: *World Economic Forum, *Global Gender Gap Report*, various years; **Papers commissioned from Fouzia Rhissassi and Khalid Berjaoui (Morocco), and Monia Ammar (Tunisia), in *Femmes, Droit de la Famille et Système Judiciaire en Algérie, au Maroc et en Tunisie*, publié sous la direction de Souria Saad-Zoy, UNESCO-Rabat, 2010; data on women in parliament from the Interparliamentary Union, <http://www.ipu.org>.

2011, and identifies women active in political parties and in women's rights organizations. In both Morocco and Tunisia, women's rights activism has played a key role in the trend toward democratic social change. Over the years, the women's rights organizations have developed the civic skills necessary to help shepherd a democratic transition and the democratic values necessary to cultivate a sustainable or "effective" democracy.[25]

WOMEN'S RIGHTS, ISLAM, AND DEMOCRACY IN THE ARAB SPRING

The Jasmine Revolution in Tunisia and the 20 February Movement in Morocco were largely populist, cross-class phenomena without hierarchy, leadership, or ideology. Protesters everywhere demanded political change and economic security, and secular and religious organizations alike took part in the protests. Although Islamist parties emerged as a major force in both countries, a countervailing feature was the presence of relatively strong, egalitarian political parties with clear social and rights-based agendas. Another advantage was that external intervention did not occur and thus the political changes proceeded organically. Finally, a pre-existing advantage in both countries was the unprecedented participation by women in the protests, along with a strong record of civic and political engagement, feminist awareness, and well-established women's rights organizations. These factors enabled Moroccan and Tunisian women to bolster their place in political society and civil society, especially when compared with outcomes for women in other countries affected by the Arab Spring.[26]

With the launch of the Arab Spring in Tunisia in December 2010 and the collapse of the Ben Ali government the following month, feminist groups mobilized to ensure a democratic transition *with* women. Fearing that the

[25] On "effective democracy," see Christian Welzel, "Democratization as an Emancipative Process," *European Journal of Political Research* 45 (2006): 871–96.

[26] On this subject, see the special issue on "Women, Gender and the Arab Spring," *Journal of North African Studies* 19/2 (March 2014), with contributions by Boutheina Cheriet on Algeria; articles on Tunisia by Mounira Charrad and Amina Zarrugh, by Lilia Labidi, and by Andrea Khalil; Sherine Hafez on Egypt; Zahra Langhi on Libya; Samia Errazzouki on Morocco; Loubna Skalli on young women's social media campaigns against sexual harassment; and introductory essays by Andrea Khalil and by Valentine M. Moghadam. See also Diane Singerman, "Youth, Gender, and Dignity in the Egyptian Uprising," *Journal of Middle East Women's Studies* 9/3 (Fall 2013): 1–27; Valentine M. Moghadam, "What is Democracy? Promises and Perils of the Arab Spring," *Current Sociology* 61/4 (June 2013): 393–408; and Moghadam, *Modernizing Women*, esp. ch. 7.

revolution in which they had taken part would come to favor Ennahda—the Islamic party that had been banned since the early 1990s—and recalling Ennahda's regressive stance on women's issues in the past, Tunisian feminists staged a protest on the eve of leader Ghannouchi's return from exile in January 2011. Another protest by thousands of women took place in February. Perhaps as a result of the women's protests, but also mindful of the presence of many qualified women, the 2011 transitional government and its four high commissions were careful to include women. Out of 115 officials, 30 were women, constituting 26 percent; this included three female cabinet ministers, although two resigned and only one, the Minister for Women's Affairs, stayed on for the duration of the year's work. It is indicative of Tunisian women activists' self-confidence and expectations that they were critical of the numbers and found women's presence insufficient.[27]

In August 2011, a new law guaranteed the right to form political parties. But the explosion of political parties—especially of centrist, center-left, and leftist parties—fragmented what could have been a progressive bloc and helped bring about the Islamist electoral victory. The election for the Assemblée Nationale Constituante (ANC, the national constituent assembly) in the fall of 2011 saw Ennahda winning 37 percent of the votes. As a result, it formed a three-party coalition government with Ettakatol and the Congrès pour la République (CPR), two secular parties that had received a relatively high proportion of ballots cast. Within the ANC, women constituted 28 percent of the members; forty of the women deputies in the ANC were from the Ennahda Party, but the others were very active. Of the numerous parties legalized, three were led by women: the Party of Social Center directed by Salma Ammar; Afek Tounès by Emna Menif (codirected with Mohamed Louzir); Movement of Democratic Edification and Reform by Emna Mansour Karoui. (Maya Jribi was already coleader of a left-wing party, the Progressive Democratic Party, later called the Parti Républicain.) The Modern Democratic Pole, a left-wing coalition party, featured a significant number of women at the head of their electoral lists in 2011, such as Nadia Chaabane of Al Massar, the former communist party. (See Table 10.2.)

Prior to the Tunisian Revolution, there was no Islamist women's association, in part due to state repression of Islamist activity. Afterwards, Islamist women mobilized largely within Ennahda, which also promoted women candidates to the ANC, forty of whom were elected. Indeed, Ennahda's Meherzia Laabidi was appointed vice-president of the ANC. But that autumn saw

[27] For details, see Andrea Khalil, "Tunisia's Women: Partners in Revolution," *Journal of North African Studies* 19/2 (March 2014): 186–99.

Table 10.2 Principal Political Parties and Women Members in Tunisia's National Constituent Assembly (ANC), 2011–14.

Political Party	Ideology	Number of Seats in ANC (% of total)*	Number of Women Members in ANC	Some Key Female Deputies
Ennahda	Islamist	89 (41%)	40	Souad Abderrahim; Meherzia Laabidi; Farida Laabidi
Congrès pour la République (CPR)	Center-left	29 (13%)		Mabrouka M'barek; Noura Ben Hassen; Samia Abbou
Aridha Shabiya (Popular Petition)	Islamic/populist	26 (12%)		Rabiaa Najlaoui
Ettakatol	Center-left	20 (9%)		Lobna Jribi; Fatma Gharbi; Salma Mabrouk; **Karima Souid; Selma Zenaidi
Parti Démocrate Progressiste (PDP)	Left-wing	16 (7.4%)		Maya Jribi; Najla Bouriel
Pole Démocratique Moderniste (PDM)	Left coalition	5 (2.4%)		Nadia Chaabane; Salma Baccar
Al-Moubadara (The Initiative)	Formerly RCD	5 (2%)		Mouna Ben Nasr; Amira Marzouk
Afek Tounès (Tunisia's Horizon)	Liberal/centrist	4 (1.89%)		Rim Mahjoub; Samira Merai
Parti communiste des ouvriers de Tunisie (PCOT)	Far left	3 (1.5%)		
Others & Independents		20 (10%)		Faiza Kadoussi
Total NCA		217 (100%)	61 (28%)	

Notes: * There were changes to various parties and their representatives over the course of the ANC. Initial reports stated that, in October 2011, a total of forty-nine women, including forty from Ennahda, were elected to the NCA (see, e.g. <https://www.ndi.org/files/Tunisia-Gender-Assessment-National-Constituent-Assembly-ENG.pdf>). With resignations, deaths, and other changes, more women deputies entered the NCA. Various accounts set the final female tally at 58, 61, or 67; I have settled on 61, as this is 28 percent of the 217 total ANC deputies. See also <http://www.womeninparliaments.org/parliament/tunisia-national-constituent-assembly/>.
** Later joined Al Massar.

Sources: Personal communication from sources in Tunis; <https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/tunisia-final-oct2011.pdf>, p. 54; <https://fr.wikipedia.org/wiki/Liste_des_membres_de_l%27Assembl%C3%A9e_constituante_tunisienne_de_2011>.

clashes with radical Islamists—Salafists as well as others who may have been with Ennahda—along with attempts to silence or intimidate artists, singers, actors, and progressive professors. In March 2012, students clashed with Salafists who tried to replace the Tunisian flag with a black flag; it took an athletic young woman, Khaoula Rachidi, to climb up the building to remove the Salafist flag and return the Tunisian flag.[28]

The Arab Spring protests in both Tunisia and Morocco were generated by grievances over deteriorating socioeconomic conditions as well as political authoritarianism and corruption, but in Tunisia's ANC, as one female deputy told me, "we wasted a year on religious and cultural debates when we should have been discussing the economy and people's social conditions."[29] The disagreements within the ANC were considerable and the debates intense. Ennahda members wanted reference to Shari'a as *a* source or *the* source of legislation, while some secularists wanted reference to universal human rights.[30] Ettakatol members declared that the new Tunisia should be neither an Islamic republic nor a military-style republic; CPR members argued that the constitution's preamble should focus on affirming the state's civic character, with stipulated protection of minority rights. The Pole Démocratique Moderniste (PDM) representatives wanted not so much US-style separation of religion and state as French-style state control over religion, that is, a kind of state bureaucracy to monitor religious activities and keep them in check. Ennahda's conservative wing wanted Shari'a as a set of laws and rules; the moderate wing preferred to speak in terms of the spirit of the Shari'a rather than the letter of the law. By some accounts, Ennahda women tended to be more flexible and accommodating, although they insisted that Article 1 of the 1959 constitution meant that Islam was the religion of the state *and* the people; and referring to what they saw as repression of religiosity under Ben Ali, they argued that a stronger statement would constrain the state.[31] After much

[28] See Lakhdar Souid, "Le Coeur palpitant des Tunisiens," in "Quelle printemps pour les femmes?" special issue, *Femmes et Réalités* 16 (mars 8, 2012): 28–30. He writes: "Dans un autre temps et un autre pays, la geste de Khaoula vous fait penser à l'américaine Rosa Parks, . . ." From a lower-income family in Gafsa, Khaoula is tall with short hair and seemingly sweet while assertive. She is quoted as saying: "Je n'ai aucune couleur politique, mais je suis Tunisienne et fière de l'être" (p. 30). On the aggressive behavior of Salafists, see the report by the International Crisis Group, 2016, available at <https://www.crisisgroup.org/middle-east-north-africa/north-africa/tunisia/jihadist-violence-tunisia-urgent-need-national-strategy>.

[29] Mabrouka M'barek of CPR, in a conversation with the author, Tunis, March 29, 2013, following a conference organized by Stanford University.

[30] Malika Zeghal, "The Enduring Muslim State in the Middle East: History and Implications," lecture delivered at the Belfer Center, Harvard University, September 18, 2014.

[31] Zeghal, "The Enduring Muslim State." She concluded that the divide in Tunisia was not between secularists and Islamists, but between different conceptions of what it means to be a democratic Muslim state. This echoes Cesari's argument on the role of religion, modernity, and the state in Tunisia's "Muslim democracy" and "unsecular democracy" (see especially pp. 243–6). In my judgment, the divide between secularists and Islamists in fact grew in 2014 and 2015.

debate, Ennahda members agreed in March 2012 that the draft constitution would retain the language of Article 1 of the 1959 constitution. Indeed, the final version strengthens it with an additional sentence: "This article cannot be modified."

Many Tunisians—whether self-described secularists or not—began to question Ennahda intentions, especially around women's rights and the CSP.[32] During the ANC deliberations, Ennahda members of the ANC sought to replace the term "equality" with words akin to "complementarity" or "partnership" in the draft constitution's Article 28. A protest wave by women's rights activists and their male supporters in the secular and left-wing parties—who took to the streets and to the domestic and international media—forced another Ennahda retreat, and the constituent assembly retained the term *equality*. It should be noted that a number of women's rights advocates—including Amel Grami, Sana Ben Achour, Salwa Charfi, and Raja Ben Slama—have distinguished themselves as experts on Islamic law and have advanced a new feminist *ijtihad* that has strengthened the female voice in religious affairs.[33] Their interventions during the intense debates in the Constituent Assembly arguably helped shift the discursive balance of power, although the secularists in the ANC were the key drivers.

The rise of Salafists and their aggressive behavior generated much discussion within the ANC regarding the proper role of religion, the rights of non-religious citizens, and the responsibility of the state. There were discussions as to whether atheism and apostasy could be tolerated; Ennahda representatives argued that "freedom of conscience" would have to be subject to the dominant culture and morals. The nationwide horror at the assassination of left-wing politicians, allegedly by Salafists, put the conservative Ennahda representatives on the defensive and created a political crisis, with renewed protests over Salafist aggression and continued socioeconomic problems.[34] Civil society groups led by the UGTT stepped in to mediate between Ennahda and its main secular opposition, the National Salvation Front, with the result that the government agreed in early October 2013 to resign and make way for a caretaker government and new elections. In early January 2014, the new constitution—which now allowed for freedom of conscience, banned *takfir* (declaring a Muslim a *kafir,* or non-believer, which could be a license to kill), established the state as custodian and as protector of religion and of citizen

[32] For a discussion of their survey of attitudes toward the CSP, growing religious conservatism, and contemporary Tunisian politics, see Jane D. Tchaicha and Khedija Arfaoui, "Tunisian Women in the Twenty-First Century: Past Achievements and Present Uncertainties in the Wake of the Jasmine Revolution," *Journal of North African Studies* 17/2 (March 2012): 215–38.

[33] Arfaoui and Tchaicha, "Governance, Women, and the New Tunisia," 157.

[34] Front Populaire members Chokri Belaid, Mohamed Brahmi, and Mohamed Belmofti were assassinated.

rights, and adopted a proportional representation parliamentary system—was adopted to much acclaim, domestically and internationally.

During visits to Tunis in March 2013 and March 2014, the atmosphere appeared very polarized. Interpreting revolution as the right to be free to practice religion openly had its complement in the desire to be free from religious and state constraints, expressed in various ways by the youth and by secularists. In March 2013, Tunis was host to the World Social Forum, which convened at the University of Tunis El-Manal. The atmosphere at the university and indeed throughout the city, where marches and rallies took place, was one of remarkable openness, with the participation of feminists, secularists, communists, anarchists, and many foreigners of various left-wing persuasions. When I approached a group of young Tunisian anarchists and asked one of the women if the law allowed them to display their anarchist symbols and publications, she smiled and replied, "Even if it did not, we still would be out here."[35] When Ommezine Khelifa, a rising star in Tunisia's Ettakatol Party, stated that "women's empowerment is deeply ingrained in our culture," informed observers did not consider this an overstatement.[36] In a conversation in March 2014, Samia Letaief of AFTURD and UGTT told me: "We are very happy with the codification of equality in the constitution, but we still have lots to do, we need many new laws, and Ennahda is still here. So I can't celebrate just yet." A survey of university students and a follow-up focus-group interview that I conducted in March 2014 showed alienation and apathy.[37] New electoral coalitions had been established, such as the secular Nidaa Tounès, which was also concerned about the seeming alienation of young people.[38] A number of feminist activists told me they preferred to remain in civil society rather than associate with the political parties. Nadia Chaabane of Al Massar disagreed, pointing out that "We need both political society and civil society if we are to build a sustainable and participatory democracy." Indeed, the open political environment and balance of political forces enabled ATFD and AFTURD to establish sections outside Tunis, in Sfax, Sousse, Bizerte, and Kairouan, and to work in coalition with the UGTT, Human Rights League, and figures from the progressive political parties toward the formation of an electoral bloc to try to prevent another Islamist

[35] Author observations; see also Valentine. M. Moghadam, "The University as an Open Space: The World Social Forum, Tunis, March 2013," *ASA Footnotes*, newsletter of the American Sociological Association, October 2013.

[36] See the article by Omezzine Khelifa, in the special issue "Quelle printemps pour les femmes?" of Tunisian magazine *Femmes et Réalités* 16 (mars 8, 2012): 34–5.

[37] I gratefully acknowledge the assistance of Professors Khedija Arfaoui, Leila Hjeije, and Samia Charfi with the questionnaires and the focus group interview.

[38] Personal communication from Dr. Mahmoud Ben Romdhane, a leading figure in Nidaa Tounès, March 2014.

victory in the next elections.[39] Tunisia's parliamentary system of proportional representation and the *parité* law enabled a 47 percent female share of candidates during the October 2014 parliamentary elections, though only 12 percent were at the head of the party lists. Eventually, women won 31 percent of seats in Tunisia's new parliament, and Nidaa Tounès gained most of the parliamentary seats overall. The new parliament looked considerably different from the ANC, especially with the fifteen seats won by the far-left Front Populaire, though losses for other progressive parties were significant.[40] In civil society, feminist campaigns around domestic violence and for equal inheritance preoccupied activists in 2014–16.

Turning to Morocco, although the Mouvement du 20 Février (20 February Movement) was largely driven by young people, the UAF eventually joined its National Council of Support.[41] As Fatima Sadiqi explains, the movement was started in part by a young woman, Nidal Hamdache Salam, who initiated a Facebook forum discussion on political and socioeconomic issues.[42] The movement also had the backing of progressive political parties, which, along with strategic decision-making on the part of the king, resulted in subsequent constitutional amendments to restrict the king's vast powers as well as to institutionalize the rights of women and the cultural rights of the Amazigh (Berber) ethnic group. Five women out of a total of eighteen members sat on the Consultative Commission for the Constitutional Reform Coalition. In April 2011, the coalition Feminist Spring for Equality and Democracy issued a memorandum to the newly formed commission, which included three key demands by the women's movement: the primacy of international conventions, namely CEDAW, over national laws; equality in civil rights between men and women; and institutionalization of affirmative mechanisms and measures for women's equality.

ADFM hosted a regional seminar in Rabat in May 2011 on Women and Democratic Transitions in the MENA region, which was attended by members of civil society, women's rights organizations, UN Women, other international

[39] Personal communications and interviews during research in Tunis, March 2014.

[40] In stark contrast to the figures in Table 10.1, Ennahda won 69 seats compared with the 86 seats for Nidaa Tounès. The breakdown of the 69 women parliamentarians was as follows: Nidaa Tounès 32 (including the well-known constitutional lawyer and feminist activist Bochra Bel Haj Hmida), Ennahda 29 (including Meherzia Laabidi), Front Populaire 3, l'Union Populaire Libre 2 (including Mbarka Aouania, widow of the assassinated Mohamed Brahmi), and two from two smaller parties. By summer 2016, however, Nidaa Tounès saw the resignation of a number of members due to disagreements with the party leader's actions. For details, see <https://en.wikipedia.org/wiki/Assembly_of_the_Representatives_of_the_People>.

[41] Zakia Salime, "A New Feminism? Gender Dynamics in Morocco's February 20th Movement," *Journal of International Women's Studies* 13/5 (October 2012): 110–14.

[42] Fatima Sadiqi, "An Assessment of Today's Moroccan Feminist Movements (1946–2014)", in *Moroccan Feminisms: New Perspectives*, ed. Moha Ennaji, Fatima Sadiqi, and Karen Vintges (Trenton, NJ: Africa World Press, 2016), pp. 51–75.

organizations, and diplomats from Morocco, Tunisia, Egypt, Syria, and Lebanon. Feminists from various countries in the region warned of the potential threats to women's rights posed by increasingly vocal and visible fundamentalist and conservative groups. The Moroccan Minister of Women's Affairs at the time, Nouzha Skalli, announced that after years of advocacy by women's rights organizations, the Moroccan government would officially ratify CEDAW's Optional Protocol. Minister Skalli, a socialist well known for her commitment to women's rights and equality, also discussed the challenges and prospects for equality in the constitutional reform process in Morocco.[43]

Morocco's constitutional amendments were approved in a referendum in July 2011—even if dissident Moroccans feel that the amendments fell short of codifying genuinely democratic and egalitarian principles.[44] Following the referendum to endorse the constitutional amendments, elections took place and the Islamic Parti du Justice et Développement (PJD) won 26 percent of seats and the right to name a prime minister. Women's share of total seats in parliament rose to 17 percent because the reserved seat system had evolved in to an expanded and eventually legalized system.[45] Nabila Mounib became the first woman elected to lead a major political party, the Parti Socialiste Unifié (PSU). A critic of the Islamist agenda and of the power of the *makhzen* (royal palace), she said that the PSU "respects Moroccan women and places women's rights at the center of the democratic struggle," adding that "my election is a victory for all women struggling for equality and dignity."[46]

Although some might assert that the PJD does not have enough power to make substantial changes, many Moroccan feminists are concerned about its agenda and feel that it is a block on further progress after the constitutional changes of 2011. At a conference that took place in Fez in June 2013, a clash of cultures and ideologies could be seen between the religious or Islamist women in the audience and a number of the speakers. There was disagreement over the law that allows a rapist to marry his victim; over fully implementing laws against child marriage (thus limiting parental privilege); and over the separation of Islam and the law.[47] Dr. Soumia Boutkhil (of Mohamed I University,

[43] See "News from May 2011 Rabat Convening on Women and the Political Transitions in the MENA Region, and a Call for Action," *Charrington*, May 25, 2011, <http://www.learningpartnership.org/print/3940>.

[44] Criticisms of the limitations of the Moroccan constitutional amendments were raised in conversations I had during a visit to Rabat, May 27–30, 2014.

[45] Darhour and Dahlerup, in "Sustainable Representation," suggest that the political uprising in the neighboring countries during late 2010–11 created a political transitional atmosphere for the reform of the Moroccan constitution, and provided an opportunity for institutionalizing the principle of gender equality in the 2011 constitution.

[46] Ramdane Belamri, "Moroccan Socialist Leader Blasts Islamists," <http://www.al-monitor.com/pulse/tr/contents/articles/politics/2012/05/secretary-general-of-the-morocca.html#>.

[47] International Forum: Mediterranean Women's Rights in the Aftermath of the "Arab Uprisings," organized by Professor Dr. Fatima Sadiqi, founder and director of the ISIS Center

Oujda) argued that Moroccan women's quest for equality had thus far resulted in a state of limbo, or "liminal citizenship," drawing attention to Constitutional Articles 3, 6, and 19. Although conceding that the family law reform was a major achievement and referring positively to the government's Agenda for Equality 2011–15, she noted gaps in the legislation, such as men's legal guardianship over children even after a divorce that gave the mother custody rights. The contradictory legal and religious discourses of the state undermined women's full and equal citizenship, she argued. In a presentation on cultural diversity and the need for women's cultural empowerment, Dr. Rachida Kerkesh (of the Ecole Normale Supérieure, Rabat) showed images of Moroccan women in varying styles of dress, from tribal to Western to hijab. Although women are presumed to be carriers of national cultures and identities, she said, their right to take part in and shape cultural expressions is restricted by male authority figures who define what is culturally appropriate. Dr. Kerkesh also questioned the authority that male kin have retained even after the sweeping reform of the Moudawana, Morocco's family law. This raised the ire of the Islamist women in the audience, some of whom used the Q&A period to voice their criticism of some of the presentations and to defend the record and objectives of the PJD.

At the same conference, Dr. Asma Lamrabet (coordinator of a Rabat-based research group on Muslim women and intercultural dialogue), argued that the emphasis on law had eclipsed Islam's spiritual message of emancipation, equality, and closeness to God. The jurists of the tenth century may have declared that the days of interpretation of the holy text were over, but she reiterated the "Islamic feminist" insistence on the right to *ijtihad* in light of new conditions. Asma El-Mehdi (president, Initiatives for the Protection of Women's Rights (IPDF), Fez), wondered whether the Arab Spring represented a step forward for women or presented a set of risks and threats. She then discussed the Springtime of Dignity campaign for the penal code reform—criminalizing rape, decriminalizing abortion, ending virginity tests—and pointed out that the women's movement was as important politically as it was culturally. Nouzha Guessous—Professor of Medicine, Hassan II University, Casablanca, and former member of the Consultative Commission on the Moudawana Reform—argued that women were now insisting on shaping understandings of culture and religion, but that the real frame of reference should be *la citoyenneté* based on natural rights and innate human rights. A quite audacious presentation was by Abdellatif Zaki (Agronomy and Veterinary Institute, Rabat), who called not only for women's full and equal

for Women and Development, and Dr. Ellinor Zeino-Mahmalat of the Konrad Adenauer Stiftung, Rabat Office, Palais des Congrès, Fez, Morocco, June 21–23, 2013. I attended as the keynote speaker; the information is based on notes I took during the conference.

rights, but also for freedom of conscience, including the right to leave Islam. The Islamist women in the audience were visibly displeased.

Activists of the 20 February Movement continue to speak out, to join the relatively frequent demonstrations of young people for jobs, and to decry what they deem to be excessive police presence at universities.[48] In June 2014, feminists held a press conference and rally to protest the prime minister's comments that "women's role" should be focused on the family.[49] They have criticized Islamist women who call for lowering the legal age of marriage to encourage wedlock and prevent premarital sex or prostitution. The younger women activists who formed Woman Choufouch in 2011 continued their campaign against sexual violence and street harassment, insisting that the dignity and freedom called for in the 20 February Movement extends to women and their bodily integrity.[50] One official survey found that some 62 percent of Moroccan women reported having experienced some form of violence.[51] A victory was won in January 2014 when the government overturned Article 475 of the penal code allowing a rapist to marry his victim; this was the result of sustained activism following the Amina Filali tragedy and a parliamentary bill drafted by the Socialist Group.

CONCLUSIONS

This chapter began by positing a positive connection between democratization and women's participation and rights. In Morocco and Tunisia, the legacy of feminist institution-building, civic engagement, and organizing, even under conditions of authoritarianism, was felt during the 2011 protests and afterwards, as women's rights activists joined others in expanding the space for political debate and action. As such, they contributed to the relatively smooth democratic transition that was launched in 2011, and they constitute a key sociopolitical force in the construction of a democratic culture in the two countries.

[48] See <http://www.al-monitor.com/pulse/security/2014/05/morocco-violence-universities-factions-political-integration.html>. In Rabat on May 27, 2014, I witnessed a demonstration of young people in front of the Justice Ministry.

[49] See <http://www.learningpartnership.org/lib/morocco-prime-ministers-speech-women-work>.

[50] Woman Choufouch—a reference to the catcall "woman, what's up?"—is an audacious campaign that was also galvanized by the 2012 suicide of Amina Filali. See Loubna Skalli, "Young Women Demanding Justice and Dignity: By All Means Necessary," *Jadaliyya* (2012), <http://www.jadaliyya.com/pages/index/4854/young-women-demanding-justice-and-dignity_by-all-m>. See also <http://www.hcp.ma>.

[51] Skalli, "Young Women Demanding Justice and Dignity."

Political scientists and scholars of democratic theory have emphasized the importance not just of formal political systems, but also of democratic cultures. Larry Diamond has written that moderation, tolerance, civility, and intellectual openness, along with the capacity for pragmatism, compromise, and negotiating, are attitudes and forms of behavior conducive to and reflective of a democratic political culture. Also central to democracy are political activities by private citizens to influence government policies, along with the presence of autonomous movements and associations that allow people to express their political preferences. Similarly, Robert Dahl discussed the need to raise civic competence through "citizen assemblies" which allow for discussion, reflection, and recommendations about public policy.[52] In this chapter, I have drawn attention to the ways in which feminist organizations and individual women's rights activists in Morocco and Tunisia have engaged with public policy through involvement in the political process and in civil society. Their conferences, seminars, and rallies may be seen as the sort of "citizen assemblies" and civic action that democracy theorists have emphasized as critical to the making of a democratic culture. As such, a large section from within the Maghreb's population of "modernizing women" seems to have developed the necessary political awareness and civic skills to help effect a successful democratic transition.

As bearers of democratic values and practices, the women's rights groups reveal a very different orientation from respondents to surveys that show very high support for democracy but low tolerance for women's equality, women's political leadership, the separation of religious law from the state, and the equality of Muslims and non-Muslims.[53] Their position on domestic violence, family law reform, and women's reproductive and sexual rights puts them at odds with Islamist groups, which continue to uphold very conservative views on these matters. While feminists in Morocco and Tunisia will utilize the language of women's human rights or of full and equal citizenship or of dignity and health to defend single mothers or female victims of sexual abuse, Islamists will revert to the tenets of Islam or the cohesion of the family as arguments against premarital sex or abortion or equal inheritance. As such, the secular–religious divide continues to assert itself in the cultural politics and the political process of both countries, although both camps include "brokers" who seek to bridge the divide through dialogue and issue-based coalition-building. At the same time, the need in both countries to improve economic conditions for all citizens and to guarantee security in the face of region-wide

[52] See Larry Diamond, ed. *Political Culture and Democracy in Developing Countries* (Boulder, CO: Lynne Rienner Publishers, 1993), pp. 7–8, 10–11, 23–4; Robert Dahl, "The Problem of Civic Competence," *Journal of Democracy* 3/4 (October 1992): 45, 55.

[53] See Amy C. Alexander and Christian Welzel, "Islam and Patriarchy: How Robust is Muslim Support for Patriarchal Values?" *International Review of Sociology* 21/2 (2011): 249–76.

violent conflicts should be acknowledged as important enough to transcend cultural differences and find common ground among the diverse political forces and women's groups.

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11

Making Spaces in Malaysia

Women's Rights and New Muslim Religiosities

Maila Stivens

> Just in April, Prime Minister Datuk Seri Najib Razak said that Islam is now being tested by new threats under the guise of humanism, secularism, liberalism and human rights.
>
> Malaysia's foremost religious authority JAKIM[1] had warned Muslims through Friday sermons nationwide against a conspiracy by "enemies of Islam" to manipulate them through ideas like secularism, pluralism, socialism, feminism and positivism.[2]

Muslim-majority Malaysia, like many other places, has confounded predictions about the supposed association of secularization and modernity. Instead, the country has seen a resacralizing Muslim revivalist project which seeks to promote an alternate Islamic modernity. Arguing that Malaysia's recent Islamization has been a thoroughly gendered process, this chapter[3] focuses on the significance of gender relations, gendered action, and, specifically,

[1] JAKIM is the acronym for Jabatan Kemajuan Islam Malaysia, Department of Islamic Development Malaysia, <http://jkim.islam.gov.my/node/1092>.

[2] A. R. Zurairi, quoting remarks by Prime Minister Datuk Seri Najib Razak, "Religious Curbs Used to Keep Malays Subservient, DAP MP Claims," *Malay Mail Online*, September 27, 2014, <http://www.themalaymailonline.com/malaysia/article/religious-curbs-used-to-keep-malays-subservient-dap-mp-claims>. Prime Minister Najib's statements created a national uproar.

[3] Australian Research Council funding is gratefully acknowledged for projects in Malaysia and Singapore: "Work and Family in the New Malay Middle Classes" (1990–3); "Public and Private: Gender and Southeast Asian Modernities" (1995–6); "Inventing the 'Asian Family': Gender, Globalisation and Cultural Contest in Southeast Asia" (2000–2): and "Imagining the Asian Child: Towards an Anthropology of New Asian Childhoods" (2006–7).

women's rights claims in the making of new politics,[4] new publics, and new private spheres within Malaysia's national Islamic modernity project.[5]

Malaysian women have long been involved in women's organizations, including Muslim organizations, and women's sections of parties; this, and their active engagement in the remaking of Muslim thought and practice within an Islamizing order, are seen as important elements of ongoing reshapings of "public" and "private" spaces alike and of ideas of the religious and secular. A particular focus is the gendering of democratization processes, processes understood both in their narrower "political" sense of public-sphere engagement and in the wider sense of women activists' robust attempts to democratize gender relations in general and the domestic in particular. Many of the leading women activists in the country are energetic scholar-activists, engaging in a politics embedded in intellectual reflection and practice, exploring their relationship to local and global feminisms. Like many such women in postcolonial orders, they have often been wary of the universalisms of Western feminisms, with some declaring themselves to be "womanists" instead. We are beholden to them for some developed "insider" accounts of their attempts to make gendered democratic space.[6]

The chapter discusses these developments in the light of recent feminist calls to rethink the assumed links between struggles for gender justice on the

[4] While this chapter's main focus is women activists, it is not reading "gender" as "women." The relative dearth of studies on masculinities in the Muslim world is noted: see Lahoucine Ouzgane, ed., *Islamic Masculinities (Global Masculinities)* (London: Zed Books, 2006); Amanullah De Sondy, ed., *The Crisis of Islamic Masculinities* (London: Bloomsbury Academic, 2014).

[5] This chapter's focus is Peninsular (West) Malaysia.

[6] These scholars include Zainah Anwar, "What Islam, Whose Islam? Sisters in Islam and the Struggle for Women's Rights," in *The Politics of Multiculturalism: Pluralism and Citizenship in Malaysia, Singapore, and Indonesia*, ed. Robert Hefner (Honolulu, HI: University of Hawai'i Press, 2001), pp. 227–52; Lai Suat Yan, "Winds of Change: The Women's Movement in Malaysia," paper presented to the Second International Malaysian Studies Conference, University of Malaya, Kuala Lumpur, August 2–4, 1999; Lai Suat Yan, "The Women's Movement in Peninsular Malaysia 1900–99: A Historical Analysis," in *Social Movements in Malaysia: From Moral Communities to NGOs*, ed. Meredith Weiss and Saliha Hassan (London: Routledge, 2003), pp. 46–74; Patricia Martinez, "From Margin to Center: Theorizing Women's Political Participation from Activism on the Margins to Political Power at the Center," Working Paper, Ralph Bunche Institute for International Studies, City University of New York, 2000, <https://www.ciaonet.org/catalog/14566>; Cecilia Ng, Maznah Mohamad, and Tan Beng Hui, *Feminism and the Women's Movement in Malaysia: An Unsung Revolution*, Routledge Malaysian Studies Series (Abingdon and New York: Routledge, 2006); Norani Othman, "The Sociopolitical Dimensions of Islamisation in Malaysia: A Cultural Accommodation or Social Change?" in *Shari'a Law and the Modern Nation-State: A Malaysian Symposium*, ed. Norani Othman (Kuala Lumpur: Sisters in Islam Forum, 1994), pp. 123–43; Norani Othman, "Grounding Human Rights Arguments in Non-Western Culture: Shari'a and the Citizenship Rights of Women in a Modern Islamic State," in *The East Asian Challenge for Human Rights*, ed. Joanne R. Bauer and Daniel B. Bell (Cambridge: Cambridge University Press, 1999), pp. 169–92; Norani Othman, "Islamization and Democratization in Malaysia in Regional and Global Contexts," in *Challenging Authoritarianism in Southeast Asia: Comparing Indonesia and Malaysia*, ed. Ariel Heryanto and Sumit K. Mandal (New York and London: Routledge Curzon, 2003), pp. 117–44.

one hand and secularisms and secular modernity on the other.[7] Contemporary contests in Malaysia between women activists and elements of both conservative Muslim religionists and the state are often represented within the rhetorical binary of "secular" and "religious," as in the quote from Prime Minister Najib in the epigraph at the head of this chapter.[8] Some women campaigners are also not immune to such binaries, on occasion representing their struggles with Islamic authorities as contests between "patriarchal" conservative religious forces and progressive secular forces. But such dichotomizing can obscure the intricate relationships between "religion" and the "political"/"state" in all their many meanings. Complex developments have tied present-day Malaysian nation-state forces and Muslim religious elements ever more closely; the dominant state mantra of a "modern, moderate Muslim nation" stands in sharp contrast to many prevailing imaginings about the incompatibility of Islam and modernity. As I shall argue, the closely entwined moral projects of a modernizing state and revivalist Islam in recent decades have important consequences for women claiming rights: Muslim or not, many claimants must necessarily engage with the "Woman Question in Islam," in its many local and global versions, in any negotiations with both the country's "illiberal" "pseudo-democracy"[9] and politicized Islamic forces. In particular, the centrality of issues of women, gender, family and household, women's bodies, and sexualities within Malaysia's own "culture wars" has seen highly limiting gender constructs being deployed as central sites for meaning-making and contest within nation-building and conservative religious rhetoric alike.

Any discussion of these issues will face conceptual problems with the charged, elusive, and often essentialized terms populating these debates, especially within the Malaysian context of postcolonial critique: these include the "state," "secularism" and "modernity,"[10] "religion," "rights," "civil society,"

[7] See Linell E. Cady and Tracy Fessenden, eds., *Religion, the Secular, and the Politics of Sexual Difference* (New York: Columbia University Press, 2013); Niamh Reilly, "Rethinking the Interplay of Feminism and Secularism in a Neo-Secular Age," *Feminist Review* 97 (2011): 7.

[8] The ongoing, highly charged debates about the nature and existence of secularism today mean that the term cannot be used in any innocent way. See Charles Taylor, "Foreword: What is Secularism?" in *Secularism, Religion and Multicultural Citizenship*, ed. Geoffrey Brahm Levey and Tariq Modood (Cambridge: Cambridge University Press, 2009), pp. xi–xxii; and discussions by Taylor's interlocutors, including: Talal Asad, *Formations of the Secular: Christianity, Islam* (Stanford, CA: Stanford University Press, 2003); José Casanova, "Secularization Revisited: A Reply to Talal Asad," in *Powers of the Secular Modern*, ed. David Scott and Charles Hirschkind (Stanford, CA: Stanford University Press, 2006), pp. 12–30; Nader Hashemi, *Islam, Secularism, and Liberal Democracy: Toward a Democratic Theory for Muslim Societies* (New York: Oxford University Press, 2009); and Craig Calhoun, Mark Juergensmeyer, and Jonathan Van Antwerpen, eds., *Rethinking Secularism* (New York: Oxford University Press, 2011).

[9] William Case, "New Uncertainties for an Old Pseudo-Democracy: The Case of Malaysia," *Comparative Politics* 37/1 (2004): 83–104.

[10] "Modernity" as always presents sizeable epistemological difficulties of eurocentrism, androcentrism, and linearity. See Maila Stivens, "Theorising Gender, Power and Modernity in

"public" and "private," "democracy," "citizenship," "woman," "gender," "feminisms," and, of course, Islam itself. As is customary, I also need to underline my own problematic and particular positionality as a "Western" female scholar, an issue that Malaysian interlocutors have not been shy about raising on many occasions.

ISLAMIZATION, MODERNITY, AND THE STATE IN MALAYSIA

Malaysia's dramatic Islamization of the last decades has arisen amidst significant transformations in economic, political, and social life. State-promoted and state-led industrialization policies since the late 1960s[11] have established Malaysia as a relatively stable, middle-income country, with per capita GDP of USD $10,538.06 (2013), and massive rises in urbanization, large-scale improvements in life expectancy, infant mortality, and literacy, rising ages at marriage, and falling birth rates. Affirmative action policies[12] to redress longstanding Malay disadvantage have seen a striking growth of new middle classes, but also increasing class differentiation and what many interpret as a shift of power to new bureaucracy and technocracy.[13] These social changes saw dramatic new masculinities and femininities: the heroic, hypermasculine "New Malay" (Melayu Baru), a decidedly male symbol of a would-be entrepreneurial "can-do" social order (as in the government slogan "Malaysia boleh!"—"Malaysia can do it!") took center stage, while large numbers of

Affluent Asia," in *Gender and Power in Affluent Asia*, ed. Krishna Sen and Maila Stivens (London: Routledge, 1998b), pp. 1–34.

[11] To avoid reifying the "state," however, I understand it to comprise a highly specific ensemble of relations and forces, a series of arenas.

[12] The New Economic Policy (1971), extended through the New Development Policy (1991–2000) and the National Vision Policy (2001–10).

[13] See Khoo Kay Jin, "The Grand Vision: Mahathir and Modernization," in *Fragmented Vision: Culture and Politics in Contemporary Malaysia*, ed. Joel Kahn and Francis Loh Kok Wah (Sydney: Allen & Unwin, 1992), p. 50; Harold Crouch, *Government and Society in Malaysia* (Sydney: Allen & Unwin, 1996). On the new middle classes in Malaysia, see Abdul Rahman Embong, *State-Led Modernization and the New Middle Class in Malaysia* (Basingstoke and New York: Palgrave, 2002); Joel S. Kahn, "Growth, Economic Transformation, Culture and the Middle Classes in Malaysia," in *The New Rich in Asia: Mobile Phones, McDonalds and Middle Class Revolutions*, ed. Richard Robison and David S. G. Goodman (London and New York: Routledge, 1996), pp. 49–78; Patricia Sloane, *Islam, Modernity and Entrepreneurship among the Malays* (Basingstoke: Palgrave/Macmillan Press; New York: St. Martin's Press, 1999). See Maila Stivens "Sex, Gender and the Making of the Malay Middle Class," in *Gender and Power in Affluent Asia*, ed. Krishna Sen and Maila Stivens (London: Routledge, 1998a), pp. 86–126; and Stivens, "Theorising Gender."

newly veiled young women enrolled in tertiary education—outnumbering male students—and entered "modern" occupations outside the home.[14] It should be noted that Malay women had long enjoyed considerable rights in the rural economy, including property ownership under both Islamic and customary arrangements,[15] although they also suffered some disadvantages under Islamic family laws.[16]

The country's resacralizing order has been driven strongly by state forces, the outcome of both the local expansion of highly complex Islamizing forces, including Malay ethnonationalism and the global emergence of Islamic revivalisms and neo-fundamentalisms.[17] Many discussions of the Middle East have presented Islamic revivalisms there as responses to rapid and disruptive social change, and in opposition to the state and to "state secularism." In the Malaysian case, however, a resolutely "not-Western," state-led modernity project and contemporary Muslim practice can be seen as mutually constitutive in all their respective multidimensional complexities.[18]

Hooker suggests that we speak of Islams, rather than Islam,[19] in the history of the country. Islam is the official religion of Malaysia and the federal constitution assumes that all Malays are Muslim. Malaysia is not an Islamic state, however, although arguments about whether it is a secular or Islamic state have been ongoing. The head of state, elected from the sultans of the constituent states every five years, is head of religion in the country, and Islamic law is administered by the states, except in the Federal Territory.[20] Moustafa among others emphasizes the present-day intertwining of religion and state

[14] The female labor force participation rate is 45%: The World Bank, "Labor Force Participation Rate, Female (% of female population ages 15+)," <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>.

[15] Maila Stivens, *Matriliny and Modernity: Sexual Politics and Social Change in Rural Malaysia* (Sydney: Allen & Unwin, 1996).

[16] For a comprehensive account of issues facing contemporary Malaysian women, see Women's Aid Organisation (WAO), (on behalf of the Malaysian NGO CEDAW Alternative Report Group), *CEDAW and Malaysia: Malaysian Non-Governmental Agencies Alternative Report*, Petaling Jaya, Selangor, 2012, <http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf>.

[17] Olivier Roy, *Globalised Islam: The Search for a New Ummah* (London: Hurst, 2004).

[18] Maila Stivens, "'Family Values' and Islamic Revival: Gender, Rights and State Moral Projects in Malaysia," in *Gender and Islam in Southeast Asia: Women's Rights Movements, Religious Resurgence and Local Traditions*, ed. Susanne Schröter (Leiden: Brill, 2013), pp. 143–70.

[19] M. B. Hooker, "Introduction: Islamic Law in South-East Asia," *Australian Journal of Asian Law* 4/3 (2002): 215. See William R. Roff, "Patterns of Islamization in Malaysia, 1890s–1990s: Exemplars, Institutions, and Vectors," *Journal of Islamic Studies* 9/2 (1998): 210–28.

[20] Almost all Malays identify as Sunni Muslims, of the Shafi'i school. See Tamir Moustafa, "Judging in God's Name: State Power, Secularism, and the Politics of Islamic Law in Malaysia," *Oxford Journal of Law and Religion* 3/1 (2014): 152–67.

governance in the country,[21] arguing that religious law has been transformed by incorporation as state law, in a process dating back to the colonial era.[22] Under British colonial rule, legal codifications established a tripartite legal structure comprising civil law, Islamic law—relegated to dealing mainly with personal/family law relating to marriage, inheritance, and kinship—and *adat* or customary law, dealing with issues of "custom" and land. "Islamic law" in Malaysia, argues Hooker, has been "in essence Anglo-Muslim law, the law that the state makes applicable to Muslims,"[23] with the state authorities monopolizing religious interpretation.[24] This historical trajectory has been highly significant in gender terms, as I shall discuss in the section on gendering Malaysian Islamization, with "private sphere," "family" issues central to the workings of Islamic law from the colonial era on.

State management of Islam has involved extensive balancing acts, however. The ruling political coalition (Barisan Nasional, National Front), led by the "Malay" party, the United Malays National Organisation (UMNO), has long expressed support for versions of a "moderate" Islamic modernity while competing with varied revivalist forces, especially the opposition Pan-Malaysian Islamic Party of Malaysia (PAS, Parti Islam SeMalaysia), to prove their respective Islamic credentials.[25] But it is problematic to pose local contests as an opposition between a homogeneous bloc of neo-traditional, conservative, theocratic revivalist forces and supposedly more moderate governmental forces, like the "modern" version of Islam promoted as Islam Hadhari by the former Malaysian Prime Minister Abdullah Ahmad Badawi (prime minister from 2003 to 2009). Such depictions neglect many of the complexities of support for revivalisms in the country, including significant middle-class endorsement, the involvement of state forces in highly bureaucratic interventions within religious regulation and practice, and the linking of "modern" and "Islamic" in Malay imaginaries. Support for revivalisms and the long-term demands for an Islamic state by PAS in particular can be understood best as the outcome of the multifaceted

21 Ibid., 153. 22 Ibid., 161–2.

23 Hooker, "Introduction," 218.

24 Moustafa, "Judging in God's Name," 152, reports that Malaysia is now ranked sixth out of 175 countries on a scale measuring state regulation of religion.

25 Michael Barr and Anantha Raman Govindasamy, "The Islamisation of Malaysia: Religious Nationalism in the Service of Ethnonationalism," *Australian Journal of International Affairs* 64/3 (2010): 292–311; Othman, "Islamization and Democratization"; Meredith L. Weiss, "The Changing Shape of Islamic Politics in Malaysia," *Journal of East Asian Studies* 4 (2004): 139–73. PAS is designated by most local writers as "Islamist," having become dominated by "Young Turk" graduates from Middle Eastern Universities during the earlier phase of the current Islamization, Anwar, "What Islam," p. 241.

development of Malay ethnicity and ethnonationalism,[26] and of earlier Islamic modernist initiatives.[27]

Local Islamizing forces[28] in the past few decades have included *dakwah* (proselytizing or missionary) groups; growing numbers and influence of Islamic non-governmental organizations (NGOs);[29] extensive moves to Islamize finance,[30] the economy, and educational institutions; the growth of a large-scale religious bureaucracy based on Shari'a law; and wide-ranging moves to Islamize the law.[31] The latter have included continuing controversial attempts in the northern states of Kelantan and Terengganu to introduce Muslim criminal law (*hudud*) and legal codifications of Islamic norms, values, and morals, as well as attempts to undo earlier Islamic family law reforms and to institute Shari'a law for all Malaysians. More generally, there has been an Arabization of architecture and other cultural forms and increased pollution taboos around non-halal food, as well as the automatic enforcement into law of fatwa such as those against "tomboys," black metal music, and women's

[26] Farish Noor, *The Malaysian Islamic Party PAS 1951–2013* (Amsterdam: Amsterdam University Press, 2013); Patricia Martinez, "The Islamic State or the State of Islam in Malaysia," *Contemporary Southeast Asia* 23 (2001): 474–503; Judith Nagata, *The Reflowering of Malaysian Islam: Modern Religious Radicals and their Roots* (Vancouver: University of British Columbia Press, 1984); Weiss, "Changing Shape." The Malayan colonial and postcolonial assemblage of ethnic categorizations essentialistically identified "Malays," "Chinese," "Indians," and "Others." These classifications persist today in the contemporary reductive, naturalized census categories: Malaysia's population in 2010 was 28.3 million, comprising 67.4 percent "Bumiputera" (literally "sons-of-the-soil"—Malays and other indigenous groups), 24.6 percent "Chinese," 7.3 percent "Indians," and 0.7 percent "Others,", Department of Statistics, Malaysia, *Population Distribution and Basic Demographic Characteristics, Malaysia 2010* (2010 Census), <https://www. statistics.gov.my/index.php?r=column/cthemeByCat&cat=117&bul_id=MDMxdHZjWTk1SjFzTz NkRXYzcVZjdz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09>. Malays formed 63.1 percent of the population of Peninsular Malaysia in 2010.

[27] Khoo Boo Teik, "Searching for Islam in Malaysian Politics: Confluences, Divisions and Governance," Working Chapters Series, no. 72, City University, Hong Kong, September 2004, <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan024764.pdf>.

[28] See Noor, *Malaysian Islamic Party*, for a detailed analysis of Malaysian Islamization.

[29] Joseph Chinyong Liow, *Piety and Politics: Islamism in Contemporary Malaysia* (Oxford: Oxford University Press, 2009).

[30] Malaysia has become a global center for Islamic finance.

[31] Norani Othman, "Religion, Citizenship Rights and Gender Justice: Women, Islamization and the Shari'a since the 1980s," in *Sharing the Nation: Faith Difference, Power and the State 50 Years after Merdeka*, ed. Norani Othman, Mavis C. Puthucheary, and Clive Kessler (Petaling Jaya: Strategic Information and Research Development Centre, 2008), pp. 34–5, argues that Islamization has produced not just legal pluralism, but an often ambiguous jurisdictional dualism, with problems of overlapping and competing jurisdiction between Islamic law and the common law, the possible centralization of Islamic law, its synthesis with English law to produce a new, overarching Malaysian common law, and the removal of unIslamic features from statutes. See Donald L. Horowitz, "The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change: pt 1," *American Journal of Comparative Law* 42/2 (Spring 1994): 233–93; Donald L. Horowitz, "The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change: pt 2," *American Journal of Comparative Law* 42/3 (Summer 1994): 543–80; Liow, *Piety and Politics*.

groups. At the same time, there has also been a growing "pop-Islamist" culture, flooding the country with Islamic local and transnational consumer goods and cultural forms.[32]

Many commentators have suggested a shift among Malays from a central identity of "(Muslim) Malay" to "Muslim" per se with Islamization. But "Muslim"—like "Malay"—has never been a singular identity. Thus, in a study of new middle classes in Kuala Lumpur and Penang in the 1990s, I found sizeable support among my informants for versions of religious revivalisms,[33] but also evidence for what one might term a postmodernization of Muslim identity and practices: my informants were offered, took up, and recreated a range of positionings within the shifting complexes of meaning surrounding ideas of an Islamic modernity.[34]

This links to the intricate relationships between Islamization and the rise of the democracy movement Reformasi (Reformation). Following the dismissal of Deputy Prime Minister Anwar Ibrahim in 1998, democracy activists called for transparent and accountable governance and the elimination of KKN (*korupsi*, *kronyisma*, and *nepotisma*): NGO and party-political mobilizations and electoral gains since Reformasi have reflected new patterns in multi-ethnic and reformist politics,[35] and new publics, not least the spaces claimed by revivalists and women activists, to be outlined in the section on gendering new Malaysian publics. New cyberspace publics have been able to bypass to some extent the previously draconian state controls over the media, although some bloggers have faced sedition charges. At the same time, there is continuing debate about the democracy movement's future: middle-class support has been uneven,[36] PAS has had a particularly awkward and ambiguous relationship within the movement, with ongoing tensions over the direction of Islamization in general and over gender issues in particular, and the opposition is presently disunited.[37] Moreover, the growing strength of a number of Malay rights organizations and their highly exclusionary rhetoric has alarmed other ethnic groups.[38]

[32] Dominik Müller, *Islam, Politics and Youth in Malaysia: The Pop-Islamist Reinvention of PAS*, Routledge Contemporary Southeast Asia Series (Abingdon and New York: Routledge, 2014).

[33] Stivens, "Sex, Gender"; Stivens, "'Family Values.'"

[34] Stivens, "'Family Values.'"

[35] Garry Rodan, "Civil Society Activism and Political Parties in Malaysia: Differences over Local Representation," *Democratization* 21/5 (2014): 826. For accounts of the democracy movement, see Edmund Terence Gomez, ed., *The State of Malaysia: Ethnicity, Equity and Reform* (London and New York: Routledge Curzon, 2004); and Francis Loh Kok Wah and Johan Saravanamuttu, eds., *New Politics in Malaysia* (Singapore: ISEAS, 2003).

[36] Gomez, *State of Malaysia*; John Hilley, *Mahathirism, Hegemony and the New Opposition* (London: Zed, 2001).

[37] See Julian C. H. Lee, *Islamization and Activism in Malaysia* (Singapore: ISEAS, 2010); Loh Kok Wah and Saravanamuttu, *New Politics*; and Noor, *Malaysian Islamic Party*.

[38] These include Persatuan Pribumi Perkasa (Perkasa) and Ikatan Muslimin Malaysia (Isma).

Political science is replete with debates about the role of the highly problematic and increasingly contested concept civil society in promoting democracy. Osella and Soares caution that we should pay "attention to the political processes and discourses producing 'civil society,' in which the state is thoroughly imbricated," rather than "seeking to isolate an almost ideal typical picture of an 'autonomous' public sphere."[39] Rodan's proposal that contemporary political processes in Southeast Asia are better understood as the opening of political space rather than as a struggle between civil society and state can be useful in thinking about the complex positionings of different political actors within Malaysia's Islamizing order.[40] It should also be emphasized that "making political space" is a central trope within much Malaysian activist rhetoric.

GENDERING MALAYSIAN ISLAMIZATION

A large body of work has emphasized the centrality of the "private sphere" issues of gender, family, women's bodies, and sexualities within both the workings of Islamic law and the cultural politics of Muslim-majority societies. As I shall discuss in the next section, many Malaysian women activists have grave concerns about the consequences of Islamization for gender equality: particular issues have been the workings and reworkings of Muslim family law, and the highly limiting gender constructs being deployed as central sites for meaning-making and contest within nation-building and conservative religious rhetorics. But important work on contemporary women's piety movements in both the Muslim world and beyond has also highlighted issues of women's agency[41] within religious movements and the ways in which such agency not only constructs new female subjectivities, but also new public and private spaces within complex local and global social formations.[42] In Malaysia, Muslim women have become important political and religious actors through a range of activities, including their everyday living of revivalist spiritualities and moralities, their engagements in the remaking of Muslim thought, their adoption of highly visible renewed modes of Muslim dress, and

[39] Filippo Osella and Benjamin Soares, eds., *Islam, Politics, Anthropology* (Chichester and Malden, MA: Wiley-Blackwell, 2010), p. 6.

[40] Garry Rodan, ed., *Political Oppositions in Industrializing Asia* (London: Routledge, 1996).

[41] Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton, NJ: Princeton University Press, 2011); Sylva Frisk, *Submitting to God: Women and Islam in Urban Malaysia* (Copenhagen: NIAS Press, 2009); Rachel Rinaldo, *Mobilizing Piety: Islam and Feminism in Indonesia* (Oxford: Oxford University Press, 2013). I prefer "political effectivity" to "agency" here, given the many problems with the latter term within feminist argumentation.

[42] See the discussion in Cady and Fessenden, *Religion, the Secular*.

their roles in neighborhood mosque, prayer, and study groups and the growing numbers of Islamic NGOs.[43]

Some feminist literature on the Middle East has seen colonial codifications of family law as directly constructing an emerging private sphere, with the colonial relegation of Islamic law to family, kinship, and inheritance matters.[44] Colonial codifications of law in Malay(si)a have clearly been important in gender terms, setting parameters for the operation of Islamic law, along with later postcolonial bureaucratizations of Islamic law. But such a model of a supposedly new private sphere can exaggerate the power of colonial law to construct both a supposed "nuclear family" and "family" as lived experience.[45] The emergence of "modern" elementary or nuclear family households within wider kinship structures has been a complex historical process intimately tied to growing commoditization, new consumer regimes, and emerging "modern" subjectivities, as well as legal codifications.[46] This historical body of law in Malay(si)a has clearly hindered some Muslim women's attempts to democratize aspects of family law, like polygamy rules. But it is also important to note that the everyday operations of syariah[47] courts can differ significantly from the formal legal precepts. For example, Peletz reports from his intensive ethnographic study of Islamic courts that they engage in practices that assume men cause most of the problems in marriage—and in so doing dilute some of the gendered inequalities that obtain in Islamic law.[48]

A key issue here is the conceptualization of the "public" "private" divide. As many have argued, the concepts of public and private are implicated in all discussions of the relationships between the state and religious discourse and practice.[49] Feminist theorizations of this divide over the last few decades have usefully deconstructed this highly problematic categorization, critiquing the long-standing androcentrism, essentialism, and eurocentrism of its conceptualizations within Western liberal political thought. In postcolonial contexts, however, it can be problematic to assume either the existence of such spheres, or their conformity to Western reified models. Anthropologists, for example, have argued for a skeptical take on the existence of such spheres outside stratified/state societies. There are further complications within ideas of the privatization of religion within secular modernity, and the denials within

[43] Sharifah Zaleha binti Syed Hassan, "Islamization and the Emerging Civil Society in Malaysia: A Case Study," in *Islam and Civil Society in Southeast Asia*, ed. Nakamura Mitsuo, Sharon Siddique, and Omar Farouk Shaeik Ahmad Bajunid (Singapore: ISEAS, 2001), pp. 76–90; Frisk, *Submitting to God*.

[44] See Cady and Fessenden, *Religion, the Secular*.

[45] See Stivens, *Matriliny and Modernity*, for discussion.

[46] Ibid.

[47] Malay normally renders Shari'a as *syariah* or *shariah*.

[48] Michael G. Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* (Princeton, NJ: Princeton University Press, 2002), p. 280.

[49] See Cady and Fessenden, *Religion, the Secular*.

some Muslim thought of any such divide: in such constructs Islam is seen as providing a total model for life, with a necessarily embedded private sphere as the core of morality. In my view, it is best to think of these spheres as contingent and contextual ideological constructs, with highly fluid, ever-changing boundaries.[50] In relation to the public sphere or public space, I will follow Nancy Fraser's proposal of the idea of a public as an arena of global citizen discourse within the nation-state, "a theatre of modern societies in which political participation is enacted through the medium of talk."[51]

Calls to produce a revivified private sphere have been a key feature of both the nation-state and revivalist moral projects, with both state and religious authorities involved in extensive "moral policing" campaigns; key tropes within the hyper-symbolizations of the culture wars have included "the family," polygamy, women's bodies, new masculinities, and homosexualities.[52] There has been a long series of staged controversies: these have included: "obedient wives'" clubs; bans on Malay women taking part in beauty pageants; raids on nightclubs; campaigns against forms of entertainment considered unIslamic, including "traditional" Malay song and dance forms; raids on drag beauty pageants; bans on gays and transvestites appearing on Malaysia's state-run television network; bans on a Seksualiti Merdeka (Sexual Rights) festival in 2011; government campaigns to "curb homosexuality;"[53] pressures on transgender people; the threatened Shari'a whipping of a woman for drinking alcohol;[54] and, perhaps most significantly, the endless Anwar Ibrahim sodomy saga and a series of apostasy and religious conversion cases under Islamic law intimately involving issues of "family."[55]

In the Malaysian context, "too modern" femininities have become central symbols within the revivalist critique of the presumed ills of a modernity designated as "too free" and "(too) Western," if not "westoxified." The figure of the high-achieving, educated, and energetic "modern Malay woman" of the new middle classes may represent a version of postfeminist femininity; but she also slides easily into the moral ambiguities of modernity both within revivalist discourses and beyond.[56] These discourses are the site of important

[50] Cf. Nancy Fraser, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* (London and New York: Routledge, 1997).

[51] Fraser, *Justice Interruptus*, p. 70.

[52] Stivens, "Sex, Gender."

[53] In 2012, for example, the government's anti-homosexual campaign "was training volunteers to 'help' people in the lesbian, gay, bisexual and transgender (LGBT) community," Patrick Lee, "Campaign to Curb Homosexuality," *Free Malaysia Today*, March 22, 2012, <http://www.freemalaysiatoday.com/category/nation/2012/03/22/campaign-to-curb-homosexuality/>.

[54] Maila Stivens, "Gender, Sharia and the Politics of Punishment: A Contemporary Malaysian Case," in *Asian Muslim Women: Globalization and Local Realities*, ed. Huma Ahmed Ghosh (Albany, NY: SUNY Press, 2015), pp. 127–60.

[55] The latter have seen both Muslims and non-Muslims caught up in their operations. See Othman, "Religion, Citizenship Rights," p. 37.

[56] See Stivens, "Sex, Gender."

intersections of religion, ideas of the nation and citizenship, and anxieties about the future of the Muslim majority: women as the bearers of neo-romantic national culture and ethnonationalist imaginaries are to secure an increasingly "religious" nation-state moral project from the many dangers it might face, including secularisms. As the quote in the epigraph at the head of this chapter suggested, these dangers are directly tied to feminisms in many such imaginaries.[57] State forces have energetically orchestrated "family" campaigns, including the earlier postcolonial project of the "Asian family," while there have been promotions of idealized notions of "traditional family values"/ "Islamic values" "happy families" in revivalist and other Muslim moral imaginaries.[58] In these overlapping imaginaries, family is seen as a critical site for producing both a new go-ahead nation, with ideal citizen-subjects, and new versions of a purer, more pious Islam. For the revivalists and state agents alike, a properly regulated private sphere is a model for public order; gender and family issues are linked explicitly to ideas of a moral hierarchy in society, including the moral authority of both religious and state forces. This developed cultural politics means that the gendering of the nation-state is intimately associated with ideas of virtue that become ever more inseparable from pious religiosity.

The deployments of "private" sphere issues within cultural politics contradictorily deny the very real changes in the domestic/private with modernization, including the national state's own policies to encourage women's participation in work outside the home.[59] But women are not necessarily to be confined to the "private" sphere in some state or religious versions of the ideal Malay woman: for example, the national state on occasion has chosen to counter more conservative PAS leaders' views on women in order to garner electoral credit, such as the time the PAS leader in Kelantan, Chief Minister Nik Aziz Nik Mat, was chided by UMNO for proclaiming that "pretty women should not work outside the home."[60]

The politicization of the private sphere has important implications for women's right activists in the specific case of Malaysia, inscribing an increasingly Islamized cultural domain for Muslim and non-Muslim activists' political interventions alike. But I would also note that while such moral imaginaries and culture wars have been seen to be especially developed within

[57] See Stivens, "'Family Values.'" [58] Stivens, "'Family Values.'"

[59] Juanita Elias, "The Gender Politics of Economic Competitiveness in Malaysia's Transition to a Knowledge Economy," *Pacific Review* 24/5 (2011): 529–52. Elias suggests the government offers little tangible support for this policy.

[60] Helen Ting, "Gender Discourse in Malay Politics: Old Wine in New Bottle?" in *Politics in Malaysia: The Malay Dimension*, ed. Terence Gomez (Abingdon and New York: Routledge, 2007), p. 89; Lim Kit Siang, blog, Friday, March 14, 2008, <http://blog.limkitsiang.com/2008/03/13/apology-to-perak-sultan-and-regent-no-offence-intended/comment-page-18/>. (Nik Aziz Nik Mat also suggested that women were the main cause of "social ills and moral decadence.")

Muslim-majority societies, similar culture wars are also a feature of the Southeast Asian region in general, with state-level politics, new religiosities, and emerging consumer regimes all key actors.[61]

GENDERING NEW MALAYSIAN PUBLICS: RIGHTS CLAIMS, RELIGIOSITY, AND GENDER JUSTICE

> Women in Malaysia are different to those in other countries. There is no need for a women's rights movement as we have from the start acknowledged equal rights for women.[62]
>
> [T]he Malaysian government has not incorporated the CEDAW Convention into national law. There is no gender equality legislation in place providing for the comprehensive realization of substantive equality of women with men in both public and private spheres of life.[63]

Malaysia has a long history of women's organizations active in welfare associations and anti-colonial nationalist struggles during the colonial period, within women's sections of parties and in ongoing campaigns for women's education, health, education, and family law reform, especially relating to marriage and polygamy.[64] There were also "grassroots" rights claims within the (Communist) Emergency of the 1940s; Rembau rural women marching for their "matrilineal" land rights against Islamic law incursions in the 1950s;[65] and labor activisms, especially those of the much-described factory women of

[61] See Stivens, "Theorising Gender"; Stivens, "'Family Values.'"

[62] Prime Minister Najib Razak, quoted in Adila Razak, "PM: No Need for Women's Rights Movement in M'sia," *Malaysiakini*, Tuesday, October 2, 2012, <http://www.malaysiakini.com/news/210484>.

[63] WAO, *CEDAW and Malaysia*, p. 9.

[64] See Rohana Ariffin, "Feminism in Malaysia: A Historical and Present Perspective of Women's Struggles in Malaysia," *Women's Studies International Forum* 22 (July–August 1999): 417–23; Lai, "Winds of Change"; Lai, "The Women's Movement," pp. 46–74; Lenore Manderson, *Women, Politics, and Change: The Kaum Ibu UMNO, Malaysia 1945–1972* (Kuala Lumpur and Oxford: Oxford University Press, 1980); Maznah Mohamad and Wong Soak Koon, eds., "Feminism: Malaysian Critique and Experience," special edition, *Kajian Malaysia: Journal of Malaysian Studies* 12/1–2 (June/December 1994); Martinez, "From Margin to Center"; Cecilia Ng and Heng Leng Chee, "Women in Malaysia: Present Struggles and Future Directions," *Asian Journal of Women's Studies* 2 (1996): 192–209; Cecilia Ng, ed., *Positioning Women in Malaysia: Class and Gender in An Industrializing State* (Basingstoke: Macmillan, 1999); Othman, "Religion, Citizenship Rights"; Ng, Mohamad, and Hui, *Feminism and the Women's Movement*; Weiss and Hassan, eds., *Social Movements in Malaysia*.

[65] See Stivens, *Matriliny and Modernity*; Peletz, *Islamic Modern*.

the industrializing 1970s expressing their discontents in episodes of spirit possession.[66] Women achieved the vote with Malayan independence in 1957. Since the 1980s, there has been a growing number of NGOs working on "women's issues," from a range of political positionings: it is estimated that, at the end of the 1990s, there were 250 women-focused NGOs in the country.[67] A key factor in the rise of these latter groups has been the expanding educational and economic roles of large numbers of women entering the new middle classes. Women have also been active members of the growing numbers of Islamic NGOs of the last decades.

As noted in my introduction, much Western feminist writing has proposed a necessary connection between secularisms and gender justice, seeing universalist claims to rights as the most effective path to gender justice; this has been particularly clear in writing about Muslim women's supposed powerlessness. Aihwa Ong argues, however, that there are "many benefits to a richer, more complex, and plural concept of gender justice" in postcolonial milieus,[68] beyond the rights-based conceptualization popular among international NGOs:

> Gender justice and rights cannot be unilaterally imposed, but are transmitted and translated through negotiations with situated religious and citizenship norms. In postcolonial milieus, ideals of gender justice interact with diverse ethical regimes to shape the conditions of possibility for problematizing gender and possible solutions to gender inequality that cannot be predetermined.[69]

As I will show in the next subsection, some Malay Muslim women activists, like members of the reformist organization Sisters in Islam (SIS), have consciously engaged with such ideas in their tense and difficult negotiations with both state agents and revivalist religionists. There have also been many attempts to rethink the nature of women's rights in such Muslim-majority social orders, with arguments for human rights to be pursued through a process of mediated "cultural" dialogue. Yet it is apparent that there has also been an increasing willingness to pursue versions of modernist ideas of rights, democracy, and gender justice by sections of the women's movement, including Muslim "womanists," in spite of their wariness of "Western" feminist agendas, and the misgivings shared by many NGOs about the language of

[66] Vicki D. Crinis, "Malaysia: Women, Labour Activism and Unions," in *Women and Labour Organizing in Asia*, ed. K. Broadbent and M. T. Ford (Abingdon: Routledge, 2008), pp. 50–65; Aihwa Ong, *Spirits of Resistance and Capitalist Discipline: Factory Women in Malaysia*, 2nd edn (Albany, NY: SUNY Press, 2010).

[67] Lai, "Winds of Change."

[68] Aihwa Ong, "Translating Gender Justice in Southeast Asia: Situated Ethics, NGOs, and Bio-Welfare," *Hawwa*: *Journal of Women of the Middle East and the Islamic World* 9/1 (2011): 30.

[69] Ibid., 26.

"women's [human] rights."[70] They themselves recognize that more modernist ideas of rights are often seen as highly problematic, not only by cynical state elements, who consistently deride such claims as "Western," but also by conservative religionists, who, like Prime Minister Najib, publicly associate such ideas with "secular" modernity.

A core problem is the complex nature of rights. One feminist response to the postmodern and postcolonial deconstructions of universalizing feminisms has been a reassertion (and perhaps reinvention) of women's rights as human rights, laying claim to, expanding, and reconfiguring the idea of human rights in a neo-universalist mode.[71] This move has had its advocates in Malaysia. But such a response also underlines the definitional issues surrounding liberal, formally juridical ideas of rights in particular, and their exclusionary character.[72] Nonetheless, such rights claims should not be construed as "Western," or even "global" imports in any simple sense: they have been produced and reinvented locally in highly specific dialogues with rich histories of ideas about freedom, rights, human rights, equality, justice, and democracy.[73] These specifically situated histories, contests, and struggles are easily overlooked in the polemics around the "Woman Question" in Islam, whether those of Western projects to "save" the Muslim woman,[74] or those of the critics of such "crusades."

In spite of misgivings about the term civil society—the space of political engagement outside state and party institutions—Weiss identifies a number of types of groups within civil society in Malaysia: NGOs advocating for human rights, sustainable development, and more; mass-based movements (such as "Islamist" or youth organizations); religious and social groups (though, clearly, not all are "political" in orientation); trade unions; public intellectuals and other unaffiliated activists; and alternative media such as blogs.[75] Weiss suggests that advocacy NGOs only developed in Malaysia in the 1980s,[76]

[70] Maila Stivens, "Introduction: Gender Politics and the Reimagining of Human Rights in the Asia Pacific," in *Human Rights and Gender Politics: Asia Pacific Perspectives*, Routledge Advances in Asia Pacific Studies, ed. Anne-Marie Hilsdon, Vera Mackie, Martha Macintyre, and Maila Stivens (London: Routledge, 2000), pp. 1–36; Maila Stivens, "Gender, Cosmopolitanisms and Rights Claims," in *Anthropology and the New Cosmopolitanism: Rooted, Feminist and Vernacular Perspectives*, ed. Pnina Werbner (London: Berg, 2008), pp. 87–110.

[71] Stivens, "Introduction."

[72] Ibid.

[73] For Asian freedoms, see David Kelly and Anthony Reid, eds., *Asian Freedoms: The Idea of Freedom in East and Southeast Asia*, Cambridge Asia-Pacific Studies (Cambridge: Cambridge University Press, 1998). Just one example: in Malay the Arabic word *haq* (rights) is rendered as *hak*, and has been used for centuries in contexts such as customary land rights.

[74] Lila Abu-Lughod, *Do Muslim Women Need Saving?* (Cambridge, MA: Harvard University Press, 2013).

[75] Meredith Weiss, "Edging Toward a New Politics in Malaysia: Civil Society at the Gate?" *Asian Survey* 49/5 (September/October 2009): 742.

[76] Ibid.; Meredith Weiss, "Introduction," in *Social Movements in Malaysia*, ed. Weiss and Hassan, pp. 1–16. See also Boon Kean Tan and Bishan Singh, *Malaysian NGOs in Development* (Kuala Lumpur: Asian and Pacific Development Centre, 1994).

forerunners to and part of citizen-driven initiatives emerging across the region in the 1990s.[77] These built on a long history of welfare, philanthropic, humanitarian, cultural, and progress associations and their political space-making.

Many NGOs, however, have been state-sponsored or organized conduits for government policy.[78] Located within the state bureaucracy and largely managed by people at the grassroots and community level, they have had access to financial and human resources through their close relationship with state patrons.[79] More active in rural areas, such NGOs have been involved in adult literacy programs, credit cooperatives, and in health and sanitation, domestic science, language, and citizenship classes. With unexamined, received notions of "women" to the fore,[80] gender concerns have often been subsumed to those of nationalism, ethnonationalism, and class in much of this activity.[81] Thus, the umbrella group, the National Council of Women's Organizations (NCWO), was considered to be not only adept at working with the state, but also very closely aligned with it. Nonetheless, the NCWO did initiate a "progressive," if highly contested, codification of the Islamic family laws of Malaysia in the late 1970s, along with Ahmad Ibrahim, dean of the University of Malaya's new law faculty.[82]

By the mid-1980s, women activists in Malaysia had joined women across the region in becoming active in "private-sphere" issues such as sexual assault and domestic violence, and were setting up refuges and crisis centers. There was also a widening concern with land rights, the environment, domestic workers' rights, problems of migrant and sex workers, sexual harassment,[83] and, later, rape and sex trafficking, as activists became bolder in addressing "sensitive" topics. A particular achievement was the concerted campaign for a Domestic Violence Act over nearly a decade by a wide-ranging coalition of women's groups drawn from across class, ethnic, and religious lines.[84] The core strategy of this campaign was an education-based process of public conscientization, seminars and workshops debating gender violence, and extensive lobbying of the government by groups like the Association of Women Lawyers and other well-connected organizations.[85] Implementation

[77] Ong, "Translating Gender Justice."

[78] Tan and Singh, *Malaysian NGOs*.

[79] Ibid.

[80] Ibid., pp. 2–3. See Lai, "The Women's Movement"; Ng, Mohamad, and Hui, *Feminism and the Women's Movement*.

[81] See Manderson, *Women, Politics*; Ariffin, "Feminism in Malaysia"; and Lai, "The Women's Movement".

[82] Anwar, "What Islam," p. 233.

[83] Ng and Chee, "Women in Malaysia."

[84] Ibid.

[85] Irene Fernandez, "Mobilising on All Fronts: A Comprehensive Strategy to End Violence against Women in Malaysia," in *Freedom from Violence: Women's Strategies from Around the World*, ed. Margaret Schuler (New York: UNIFEM: Women, Ink, 1992), pp. 101–20.

of the Act has continued to be difficult in the face of both procedural problems and pressure from conservative clerics, however.[86] Local activists note that it was easier to gain political support for laws criminalizing rape than for laws against domestic violence.

In the 1990s, a group of women activists from differing ethnic and religious backgrounds came together to produce a Women's Manifesto. The group lobbied political parties about women's work, the law and violence against women, and wider issues of development, corruption, democracy, and human rights.[87] In 1999, this coalition developed the Women's Agenda for Change (WAC),[88] a document to be presented to the government. This covered women's relationships to participatory democracy, religion, and culture, violence against women, land, women and health services, the law, work, (HIV/) AIDS, and the environment. A final section on "women, health and sexuality" was only added later,[89] reflecting anxieties about concerns with sexuality being seen as too "Western" and problematically associated with the supposed amoral freedoms of secular modernity. While the WAC was initially well received by the government, little effective support from parliamentarians was ultimately forthcoming.[90]

It is arguable that the Women's Agenda for Change was part of forces both precipitating democracy claims and contributing to an overt gendering of the democracy movement. Building on pre-existing campaigns around domestic violence, the WAC directly posed such violence, gender justice, and governance as interlinked public issues.[91] Some women have also played leading roles in the democracy movement, including Wan Azizah Wan Ismail (Anwar Ibrahim's wife), Irene Fernandez, a labor activist, and, later, Ambiga Sreenevasan, a prominent human rights lawyer and women's rights advocate, who chaired the multi-ethnic activist coalition Bersih 2.0 (Gabungan Pilihanraya Bersih dan Adil, Coalition for Clean and Fair Elections). In the view of activists, Reformasi in turn gave further impetus to women working toward a unified women's movement.

Women's groups decided to capitalize on new Reformasi spaces by engaging directly with state forces through electoral politics: a newly formed

[86] See Tan and Singh, *Malaysian NGOs*; Ng, Mohamad, and Hui, *Feminism and the Women's Movement*.

[87] Women's Agenda for Change (WAC), "Introduction to the Women's Agenda for Change," <http://wa4change.tripod.com/english.htm>; Lai, "The Women's Movement"; Martinez, "From Margin to Center"; Ng, Mohamad, and Hui, *Feminism and the Women's Movement*.

[88] This included: Wanita JIM, the women's wing of Jamaah Islah Malaysia (Malaysian Islamic Reform Society), a Muslim NGO; Sisters in Islam; All Women's Action Society (AWAM); Persatuan Sahabat Wanita Selangor (PSWS), a women workers' support group; Malaysian Trade Union Congress (Women [sic] Section); the Women's Development Collective (WDC); and the Selangor Chinese Assembly Hall (Women [sic] Section).

[89] Martinez, "From Margin to Center."

[90] Ting, "Gender Discourse."

[91] Cf. Ong, "Translating Gender Justice."

Women's Candidacy Initiative (WCI) therefore fielded a woman candidate in the 1999 general election.[92] While this clearly furthered women's claims for a central place within the democracy movement, it had little direct impact on parliamentary representation per se. Women have had continuing difficulties entering formal electoral politics—women only hold 10 percent of parliamentary seats, for example[93]—although this is scarcely a problem confined to Malaysia. On occasion, state elements have paid what activists see as lip service to women's demands and rights, and mobilized around gender issues, hoping to attract the women's vote[94] and to counter challenges to its political legitimacy by conservative religionists.[95] Ng, Mohamad, and Hui, however, regard the state as reinforcing this legitimacy by appropriating rights rhetoric and the women's and democracy movement causes within electoral campaigns.[96] They also see problems with women's mobilization into male-directed organizations such as political parties.[97] Together with opposition parties, conservative religionists too have occasionally presented more liberal perspectives to increase their credibility with their supporters:[98] PAS, for example, wooed the women's vote by "allowing" [*sic*] women candidates to contest the 2004 election.[99] PAS has not clarified its stance toward gender justice within an Islamic state, however.

The complex links between NGOs and state and conservative religionist elements point to the tensions and difficulties in finding political spaces within which to assert rights claims against a state apparatus intent on managing opposition ideologies, activities, and identities. As suggested in the section on gendering Malaysian Islamization, there are especial pressures on Muslim and non-Muslim activists alike in being forced to operate within increasingly Islamized cultural domains. Martinez points to the ways in which women's NGOs have achieved (some) substantial gains for women, such as the domestic violence legislation, "by working with the possibilities that surface from the state not as a single entity, but as a conglomeration of bureaucracies, institutions

92 See Lai Suat Yan, "Participation of the Women's Movement in Malaysia: The 1999 General Election," in *Civil Society in Southeast Asia*, ed. Lee Hock Guan (Singapore: Institute of Southeast Asian Studies, 2004), pp. 122–43; Patricia Martinez, "Complex Configurations: The Women's Agenda for Change and the Women's Candidacy Initiative," in *Social Movements in Malaysia*, ed. Weiss and Hassan, pp. 75–96, for detailed accounts. See also Zarizana Abdul Aziz, "Strategies for Change in the Women's Movement in Malaysia," Expert Group Meeting, Violence Against Women: Good Practices in Combating and Eliminating Violence Against Women: UN Division for the Advancement of Women in collaboration with the UN Office on Drugs and Crime, May 17–20, 2005, Vienna, Austria, <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/abdulaziz.jag.pdf>; and WAO, *CEDAW and Malaysia*.

93 WAO, *CEDAW and Malaysia*.

94 Saliha Hassan, "Women in the 2004 Malaysian General Election," paper presented at the Program Sains Politik, PESPESI, FSSK, Universiti Kebangsaan Malaysia, 2004.

95 Ng, Mohamad, and Hui, *Feminism and the Women's Movement*.

96 Ibid., p. 154. 97 Ibid. 98 Ibid. 99 Ibid.

and individuals."[100] Ng, Mohamad, and Hui, however, emphasize the dangers of appropriation and cultivation of the movement by the state, which legitimates its authoritarian stance through such co-option.[101] These are familiar experiences for feminists worldwide, who debate the advantages and disadvantages of working with and within, rather than against, the state.

As noted in my introduction, many scholar-activists from the 1990s on have been involved in highly reflexive explorations of their relationships to local and global womanisms and feminisms. In the view of Ng, Mohamad, and Hui,[102] the movement has embraced shifting and fluid notions of feminism in the process. The multicultural perspectives of women's organizations involved in both the WAC and the Reformasi movement more generally were particularly significant, however. But while many women's groups during and after Reformasi have consciously sought to transcend ethnic and religious divisions, the intersections of ethnicity and class have made for some further tensions and instabilities in rights claims: most observers have seen the middle-class character of many women's NGOs and issues of accountability as particular and continuing problems, for example.[103]

Women in Muslim Associations, NGOs, and Party Sections

The majority of Muslim associations/organizations in which women have participated have been missionary and welfare societies.[104] Early organizations were mainly involved in welfare, social activities, and areas such as religious education, but over time a number developed ties with nationalist forces. During the two periods of intense Islamic revivalism, however, the 1920s reform period and *dakwah* in the 1970s, many women joined revivalist organizations in search of a revivified Muslim life, and as acts of defiance against the then Muslim establishment.[105] Women's arms of some political parties have also been important in the sphere of Muslim politics; although it was not supportive of women's rights per se, the women's arm of PAS, Dewan Muslimat, achieved new importance with Reformasi.

[100] Martinez, "Complex Configurations," p. 83.
[101] Ng, Mohamad, and Hui, *Feminism and the Women's Movement*. [102] Ibid.
[103] See Ng, Mohamad, and Hui, *Feminism and the Women's Movement*; Lai, "The Women's Movement."
[104] Weiss and Hassan, eds., *Social Movements in Malaysia*; Sharifah Zaleha binti Syed Hassan, "Strategies for Public Participation: Women and Islamic Fundamentalism in Malaysia," in *The Freedom to do God's Will: Religious Fundamentalism and Social Change*, ed. Gerrie ter Haar and James J. Busuttil (London and New York: Routledge, 2002), pp. 49–74.
[105] Hassan, "Strategies"; Saliha Hassan, "Islamic Non-Governmental Organisations," in *Social Movements in Malaysia*, ed. Weiss and Hassan, pp. 97–114; Ng, Mohamad, and Hui, *Feminism and the Women's Movement*, p. 85.

Liow observes that it “is important to note the recent proliferation of [Muslim] civil society groups and NGOs that can be defined as Islamist by virtue of their articulation of relatively clear and deliberate Islamic agendas, contribution to ongoing debates, and the potential influence they wield over the trajectory of Islamism in the country”:[106] they are seen as becoming the dominant force in Malaysian politics.[107] From the “progressive” side of politics, on the other hand, some Muslim NGOs have been engaging with interfaith organizations, notably the recently formed, energetic Islamic Renaissance Front (IRF), which actively campaigns for a “secular” society (i.e. a society observing full freedom of religion).

Saliha Hassan’s account of Muslim NGOs underlines the developed ideas of the “Woman Question” within revivalist Muslim circles,[108] although Muslim women were strongly courted for their labor in supporting NGO activities and in mosque groups. The assumed “welfare” character of many of these NGOs obscures their wider political significance, however. The gender dimensions of this politics have not been explored in the literature on Malaysia. First, such welfare provision as religious duty has strong class dimensions, with a heavy stress on the more affluent helping the marginalized; this emphasis has emerged strongly in recent Muslim NGO activities. Second, women have shaped new spaces within the national Islamic modernity project through their energetic involvement in such welfare activities within formal and informal Muslim groups. One could also see some earlier groups constructing the conditions of possibility for the development of later Muslim womanist/feminist and other women’s organizations: as with the nationalist organizations, there has clearly been a strong maternalist political dimension to these activities, again, one that has not been explored in the Malaysian literature. While not overtly “political,” such welfare organizations can be seen as part of processes supporting “women’s interests,” understood in wider maternalist terms. One might also consider the gendered political effectivity of women members of revivalist NGOs and their quite separate agendas—although these are as yet mostly undocumented for Malaysia. Insofar as some of these groups might fit into the “neo-fundamentalist” category of Olivier Roy’s scheme,[109] their actions in seeking justice within a global *ummah* also have universalist dimensions that are nonetheless simultaneously exclusionary.

[106] Liow, *Piety and Politics*, p. 188.

[107] Clive Kessler, “Islam, the State and Desecularization: The Islamist Trajectory during the Badawi Years,” in *Sharing the Nation: Faith Difference, Power and the State 50 Years after Merdeka*, ed. Norani Othman, Mavis C. Puthucheary, and Clive Kessler (Petaling Jaya: Strategic Information and Research Development Centre, 2008), pp. 59–80.

[108] Hassan, “Strategies.”

[109] Roy, *Globalised Islam*.

Sisters in Islam

> Promoting an understanding of Islam that recognises the principles of justice, equality, freedom, and dignity within a democratic nation state.[110]

One of the most significant developments within Malaysian women's activism has been the rise of the NGO Sisters in Islam (SIS). Formed in 1988, the core group comprised a small group of professional women with skills in Islamic studies, theology, law, Shari'a law, gender studies, sociology and anthropology, journalism, social planning and social work, women's health, and Islamic art and creativity.[111] Part of an internationalist movement working to reclaim a social justice agenda within Islam,[112] SIS's mission is to promote the development of an Islam that recognizes equality between women and men and that adheres to the principles of justice and democracy; the aim is to contribute to a "more informed public debate on topical issues of concern."[113] The group has had a very considerable international impact, with numerous invitations to address conferences and groups overseas,[114] and many appearances in a growing literature.[115]

SIS's central "long-term objectives" are:

- to promote a framework of women's rights in Islam which takes into consideration women's experiences and realities;
- to eliminate injustice and discrimination against women by changing mindsets that regard women as inferior to men;

[110] Sisters in Islam website, banner, <http://www.sistersinislam.org.my/>.

[111] Sisters in Islam website, <http://www.sistersinislam.org.my/>.

[112] See Fatima Mernissi, *Islam and Democracy: Fear of the Modern World* (Reading, MA: Addison-Wesley Publishing Co., 1992); Amina Wadud-Muhsin, *Qur'an and Woman* (Kuala Lumpur: Fajar Bakti, 1992); Amina Wadud-Muhsin, *Inside the Gender Jihad: Women's Reform in Islam* (Oxford: Oneworld, 2006).

[113] Sisters in Islam website, <http://www.sistersinislam.org.my/>.

[114] France also made Zainah Anwar, a core member, a Chevalier de la Légion.

[115] See Sisters in Islam website, <http://www.sistersinislam.org.my/>. Scholarly discussions include Anwar, "What Islam"; Yasmin Moll, "'People Like Us' in Pursuit of God and Rights: Islamic Feminist Discourse and Sisters in Islam in Malaysia," "Gender and Islam in Asia," special issue, *Journal of International Women's Studies* 11/1 (November 2009): 39–55; Azza Basarudin, "In Search of Faithful Citizens in Postcolonial Malaysia: Islamic Ethics, Muslim Activism, and Feminist Politics," in *Women and Islam*, ed. Zayn Kassam (Santa Barbara, CA: Praeger, 2010), pp. 93–128; Azza Basarudin, *Humanizing the Sacred: Sisters in Islam and the Struggle for Gender Justice in Malaysia* (Washington: University of Washington press, 2016); Ratna Osman and Catherine Hirst, "Sisters in Islam: Engendering Islamic Law Reform in Malaysia," in *Muslim Secular Democracy: Voices from Within*, ed. Lily Zubaidah Rahim (New York: Palgrave Macmillan, 2013), pp. 191–284; and at least two PhD theses completed or in process. See also Chapter 5, this volume; Maila Stivens, "(Re) Framing Women's Rights," in *Malaysia: Islam, Society and Politics, Essays in Honour of Clive Kessler*, ed. Virginia Hooker and Norani Othman (Singapore: Institute of Southeast Asian Studies, 2003), pp. 126–46; and Stivens, "Gender, Cosmopolitanisms."

- to increase public awareness and reform laws and policies within the framework of justice and equality in Islam.[116]

SIS has submitted numerous memoranda to the government and disseminated its views through press statements, newspaper articles and letters in Malay and English, academic writings, pamphlets, and television and other media appearances. Memoranda have included "Reform of the Islamic Family Laws and Justice in the Syariah System," "Reform of the Islamic Family Laws on Polygamy," "Reform of the Islamic Family Laws and Administration of Justice in the Shariʿah System," "Provisions in the Syariah Criminal Offences Act and Fundamental Liberties," and "Hudud Law in Kelantan and the Syariah Criminal Offence Act and Fundamental Liberties." The group has also addressed polygamy—including through a national-level research study—as well as divorce, equality, dress codes for Muslim women, arbitrariness in implementation of syariah criminal laws, issues of apostasy, and Qur'anic views of modesty. They also campaigned successfully for female Islamic court judges to be appointed. A main focus is promoting equal rights for women in the area of "Muslim family law"—a term they prefer to "Islamic family law"—indicating their view of the social origins and mutability of this body of law. They have been very active in struggles over conservative religionists' attempted amendments to earlier reforms of Islamic family laws from the 1990s on.[117] More recently, SIS has moved to education work, providing training workshops and legal counselling.[118] SIS has also organized a number of important conferences and seminars, including ones on Shariʿa law, on *hudud* (Islamic criminal law), and on Islam, reproductive health and women's rights. The year 2009 saw the launch of Musawah, a "Global Movement for Equality and Justice in the Muslim Family" in Kuala Lumpur, with 250 activists, scholars, academics, legal practitioners, and policymakers from some fifty countries attending.[119]

The group's core strategy has been to promote claims to rights within highly sophisticated, reconfigured ideas of rights, seeking sources for women's rights and internationally recognized human rights in the local Muslim "culture" and religious teachings through highly reflexive participatory processes of "cultural mediation."[120] This strategy refuses a simplistic opposition between universalist rights claims and cultural relativism, seeking to overcome some of the binaries and polemics that have dogged human rights and women's rights debates.

[116] "Mission Statement and Objectives," Sisters in Islam website, <http://www.sistersinislam.org.my/page.php?36>.

[117] Anwar, "What Islam"; Othman "Religion, Citizenship Rights."

[118] See Sisters in Islam website, <http://www.sistersinislam.org.my/>.

[119] See <http://www.musawah.org>.

[120] Othman, "Grounding Human Rights"; Anwar, "What Islam."

At the same time, SIS argue for a transformation of the Islamic part of the world through "a modern notion of law" and a modernizing and regalvanizing of Islamic culture and reform from the *inside*, to create an "authentically Muslim culture of modernity."[121] From the beginning, the organization emphasized the importance of engaging with the larger issues of nation-building, governance, Islamization, human rights, and democratic movements in the country, and the "challenge of change and modernity."[122] It particularly stresses the role of democratic law-making, and challenges attempts to remove law-making and policymaking on Islamic matters from the public domain.[123]

SIS sees itself as "one of the main advocates of justice and equality [within] Islam, not only in Malaysia but throughout the world."[124] Its "faith-based perspective of a just God"[125] has obviously been inspiring to Muslim women globally: SIS members have created complex, multilayered, cosmopolitan spaces with robust links to global womanist and feminist cosmopolitan spaces, forming an international counter-public.[126] They have been particularly important in claiming a place as public intellectuals engaged in religious interpretation and the remaking of Muslim thought and practice, a space often occupied with difficulty by Muslim women. In so doing, they have asserted new forms of "womanist" politics not only within the contested spaces of the Malaysian Islamic modernity project, but also within wider global would-be Islamic feminist counter-publics and projects.

But SIS has also faced extreme criticism on occasion, mainly from local conservative religious authorities, and wider criticisms that it is too "secular," and not properly Muslim. Some critics among oppositional activists have also suggested that SIS was too close to government, had been co-opted,[127] and was too internationalist in outlook. For example, there were suggestions that former Prime Minister Mahathir Mohamad had found it advantageous to enlist the Sisters' Islamic reformism as a voice of "moderate" Islam in his continuing struggles with PAS in the eastern states of Malaysia prior to the political unrest of Reformasi. More recently, SIS has faced strong criticism from both government and religious bureaucracies, being accused of, among other things, promoting pluralistic, liberal views of Islam. In 2014, for example, the Selangor Islamic Religious Council (Majlis Agama Islam Selangor, MAIS) pronounced a legally binding fatwa declaring any persons or groups "professing liberalism or religious pluralism" to be "deviants," and singling out SIS.

[121] Othman, "Sociopolitical Dimensions," p. 140.

[122] Sisters in Islam, "The SIS Story," <http://www.sistersinislam.org.my/page.php?35/>.

[123] Anwar "Whose Islam," p. 247. [124] Sisters in Islam, "SIS Story."

[125] Shelia Nair, "Challenging the Mullahs," *International Feminist Journal of Politics* 9/2 (2007): 240–8.

[126] Stivens, "Gender, Cosmopolitanisms."

[127] See the (surprisingly brief and somewhat dismissive) coverage of SIS in Ng, Mohamad, and Hui, *Feminism and the Women's Movement*, where this is suggested.

CONCLUSION

This chapter has addressed the significance of gender relations, gendered action, and women's rights claims in the making of new politics, new publics, and new private spheres within the Malaysian national Islamic modernity project. It is clear that developments in the country strongly undermine any simplistic association of struggles for gender justice with secularisms and secular modernity. The close relationship between state forces and emerging revivalisms has posed enormous challenges for both Muslim and non-Muslim activists alike in locating spaces for women's rights claims. The ties between opposition forces and PAS, and the growing influence of what most observers term Islamist NGOs, have posed particular problems for women's involvement in the democracy movement. But the responses of women campaigners to those difficulties have pointed up some of the nuances and complexities of the relationships between searches for gender justice and the nexus of state, nation, and religious relations.

The main body of the chapter examined the ways in which "womanist"/feminist organizations, especially Muslim women's associations, have worked over the last few decades to construct new public spaces for a range of conversations about women's rights. Organizing around expanded ideas of gender justice, activists have focused on issues of the domestic—the "private"—in particular, family, family law, sexualities, and violence against women. This has produced significant public contestations at the intersections of state, gender, and religious relations: interventions by women's organizations into "private-sphere" issues of family law, sexualities, and violence against women in particular have opened up new areas of political, religious, and legal discourse, and produced some important policy successes, like the Domestic Violence Act. But NGO efforts have also, on occasion, provoked strong counter-reactions from elements of the state and conservative religionists alike.[128] These reactions show some of the limits on public space-seeking, given the continuing power of both an authoritarian state and neo-traditionalist versions of Islamic discourse and practice in the current political order.

The varying activities of Muslim women's organizations, womanist/feminist and non-feminist, have pointed to the importance of religiously based action in creating new public and private spaces, whether the maternalist politics of welfare organizations, the space-making of women's mosque group associations within the piety movement, or the more directly rights-claiming, feminist, culturally mediated interventions by Sisters in Islam and others into areas like Muslim family law. The campaigns by SIS in particular have complicated the binary of "religious" and "secular." I also suggested that the

[128] Othman, "Religion, Citizenship Rights."

gendered dimensions of both earlier maternalist Muslim associations and the Islamic revival itself in fact provided some of the conditions of possibility for a developed program like that of SIS and its reshapings of Muslim female political effectivities and Muslim "publics," both nationally and globally. Such reshapings again subvert ideas about a necessary link between secularisms and the achievement of women's rights.

I outlined, too, the complexities surrounding ideas of rights, and the importance of rights claims made within a conceptual framework of Islamic human rights to be pursued through a process of mediated "cultural" dialogue rather than through universalist claims to human rights. But, as I argued, such reconfigurations and reimaginings of rights and associated strategies have faced a series of complex challenges. Activists have not only had to negotiate tense and difficult relationships with the authoritarian post-independent state, but must also confront a state modernity project which has become an increasingly "religious" undertaking, replete with the language of piety: as suggested, they must necessarily engage within increasingly Islamized cultural domains, confronting the moral policing of contemporary cultural politics. Moreover, this politics has meant an increasing delegitimization of women's activist interventions, which are easily characterized as "humanist"/human rights-seeking, "secular," "liberal," "pluralist," "socialist," "feminist" and "positivist" (*pace* Prime Minister Najib). The terms of the abuse aimed at feminists as "enemies of Islam" speak to the importance of gender within this political assemblage.

The emerging alliances among women's organizations have been highly significant: women have consciously and reflexively aimed to organize on a more multicultural, universalist, if not cosmopolitan, model, transcending ethnic and religious differences; this has important political dimensions in a social order so long marked by hyper-ethnicity and ethnonationalisms. It is not clear, however, how far the post-Reformasi political processes have taken, and will take, into account the demands by women's organizations for gender justice. While there is a dogged ongoing enthusiasm among organization members, many activists have been somewhat pessimistic about the prospects for lasting change. They see apparent state support for women's rights claims, when it does occur, as a cynical attempt to appropriate democratic and feminist causes, and to forestall challenges against the government by conservative religionists.[129] There is also concern about the direction of what some term "NGO-ization" or "Activism.Inc" in Asia more generally, in which the "professionalization" of the women's movement undermines its political force.[130] On the other hand, the continuing growth of cyberspace is signaling energetic new rights claims by younger women and there is an extensive

[129] Cf. Ng, Mohamad, and Hui, *Feminism and the Women's Movement*, p. 153.

[130] Tan Beng Hui, "Movement Building and Feminism in Asia: Challenges and Opportunities," in *The Future of Asian Feminisms: Confronting Fundamentalisms, Conflicts, and Neoliberalism*, ed.

development of lesbian, gay, bisexual, trans gender and queer (LGBTQ) claims to rights, as well as longer-term ongoing activism around HIV/AIDS, both of which also involve men. Various Facebook groups and blogs,[131] for example, list overtly feminist and queer causes from home and abroad, and record approvingly the interventions of SIS. As such, they no doubt confirm the very worst fears of conservative religionists and state functionaries alike about the course of the women's movement in Malaysia.

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[131] See, for example, the websites for "Angry Malay Woman," <https://dgreymatter.wordpress.com/>, "G-Blog," <https://thegblog.org/>, and "The Malaysian Feminist," <https://www.facebook.com/feministmalaysia>.

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Index